

ARTIFICIAL INTELLIGENCE 2026

FINANCING DATA CENTRES IN PORTUGAL

MACEDO VITORINO

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INTRODUCTION

The large language models ("LLMs") behind today's AI systems need large amounts of processing power, and developers are building new data centres worldwide to supply it, with Europe trying to keep pace with the United States and China.

Portugal brings clear advantages to data centre developers:

- proximity to the submarine cables linking Europe, Africa and the Americas;
- installed renewable capacity (onshore and offshore wind, and solar), with favourable conditions for developing new projects;
- a modern, scalable telecommunications fibre network; and
- established technical expertise.

According to market estimates (not official statistics), Portugal's operational data centre capacity stood at roughly 47 MW in early 2025, after the 26 MW SIN01 facility came online at the Start Campus project in Sines. By March 2026, Portugal's total planned IT capacity exceeded 2.6 GW, with Lisbon alone accounting for roughly 1,389 MW, up from 373 MW a year earlier.

Data centre projects require substantial capital, so access to early financing is a key component in project structuring and development. This briefing sets out the financing types best suited to data centre projects in Portugal (equity, bonds and loans) and the legal due diligence matters lenders need for their evaluation process.

This is the final paper in our series on the legal aspects of developing data centres in Portugal. Read it alongside the earlier papers, which cover the licensing and environmental framework, zoning, land rights, access to power, telecommunications connections, and data protection and cybersecurity.

1. FINANCING SOURCES

The capital structure of a data centre project in Portugal typically combines several financing sources, each with distinct features, costs, risks and regulatory implications. The right mix depends on the project's stage, the sponsors' financial profile, the existence of long-term off-take arrangements with creditworthy counterparties (typically hyperscalers), and market appetite for data centre exposure.

In general, financing sources for data centre projects can be grouped as follows:

- **Equity**. Permanent capital contributed by sponsors, infrastructure funds, private equity firms, strategic investors and, in some cases, hyperscalers acting as anchor tenants.
- **Loans**. Bilateral or syndicated credit facilities extended by domestic and international banks, as well as alternative lenders.
- **Bonds**. Debt securities issued by the project company or by a sponsor-level vehicle, placed with institutional investors through public offerings or private placements.
- **Hybrid and complementary structures**. These include shareholder loans, mezzanine debt, leasing (operational or financial), vendor financing for IT equipment, and public support (for example, EIB financing or Portugal 2030 grants and loans).

In practice, most large data centre projects in Portugal are structured as project financings, in which a dedicated special purpose vehicle ("SPV") is incorporated to develop, own and operate the facility, combining sponsor equity (and, where applicable, shareholder loans) with senior debt from a bank syndicate, potentially refinanced through bank debt or bond issuances. Larger projects may also involve multiple SPVs, separating ownership of the assets from operational activities. As discussed in Section 2 below, equity typically predominates in the early stages, before stable tenant cash flows support bank debt. The security package is granted by the SPV and its shareholders, as applicable, and typically covers the land, building, equipment, contracts and shares of the

SPV. Smaller or single-tenant projects may instead be financed on a balance sheet basis by the sponsor, structured as corporate debt rather than project finance debt of an SPV.

With aggregate financing needs expected to reach billions of euros over the next decade, funding will rely on a combination of equity, bank debt and capital markets instruments. No single source of capital will be sufficient, and most projects will require blended structures, including sponsor equity, syndicated senior debt, bond issuances and, increasingly, green and sustainability-linked instruments.

Market indicators point to sustained growth in financing demand. According to EDP's internal forecasts, Portugal's electricity demand is expected to grow at a compound annual rate of approximately 4.5% between 2026 and 2035, with around 60% of this increase being driven by the expanding data centre pipeline. This compares with an estimated EU growth rate of about 2.3% annually. In addition, electricity consumption increased 3.5% year-on-year to a record 27.2 TWh in the first half of 2026, according to grid operator REN.

2. EQUITY

2.1. SOURCES OF EQUITY

Equity is the primary source of capital in the early stages of a data centre project, before the sponsor has secured binding tenant commitments to support debt repayment. In a typical project financing, equity represents between 20% and 40% of total project cost. At the outset, however, nearly all funding tends to come from founders, industry players, hyperscalers and private equity investors.

This is because, during early development, environmental approvals, construction permits and firm access to power are typically still pending, making it difficult to secure tenants. Once these milestones are cleared, sponsors can generally obtain letters of intent from prospective tenants and hyperscalers, but these are usually non-binding and will not, on their own, support local bank financing. Until binding tenant commitments are in place, the burden of funding the project falls on equity investors.

The main sources of equity for the development of data centres in Portugal may include:

- industrial sponsors and strategic investors, including telecommunications operators, IT and cloud service providers and specialised data centre operators, which bring both capital and operational expertise;
- infrastructure and real estate funds, including Portuguese and pan-European funds with dedicated digital infrastructure strategies, which typically invest through minority or majority stakes in the project SPV and seek stable long-term cash flows;
- private equity firms, which may invest at either the sponsor level or directly in the SPV, often in combination with a buy-and-build strategy aimed at creating a regional data centre platform;
- hyperscalers and anchor tenants, which may participate in the equity of the project in exchange for capacity commitments or preferential contractual terms. Anchor tenant participation can materially reduce the demand risk of the project and enhance its bankability; and

- sovereign and development investors, including sovereign wealth funds and multilateral institutions, which may co-invest alongside private sponsors in projects with strategic significance.

2.2. INVESTMENT VEHICLE

Equity investments are typically structured through a Portuguese quota company (*sociedade por quotas*) or a joint stock company (*sociedade anónima*).

Both company types can be managed in broadly similar ways, although quota companies can be less formally managed: their shareholders retain the power to decide on management issues, whereas in joint stock companies management decisions fall to the Board of Directors.

There is also a difference regarding the minimum number of shareholders. As a general rule, a joint stock company must have at least five shareholders, while a quota company only requires two[1]; however, both of these are general rules only, since, as noted below, Portuguese law allows a sole shareholder to incorporate either a single-shareholder quota company (*sociedade unipessoal por quotas*) or, under certain conditions, a single-shareholder joint stock company.

The joint stock company is generally preferred for larger projects, offering greater flexibility for multiple shareholders, easier share transferability, and compatibility with future equity fundraising or listing. It is also best suited to access the bond markets discussed in Section 3.2 below, since the Companies Code (*Código das Sociedades Comerciais*) regulates bond issuances by joint stock companies (*sociedades anónimas*) in detail, although Decree-Law 160/87, of 3 April 1987, also allows quota companies to issue bonds.

[1] Article 273(1) and Article 479 of the Portuguese Companies Code (*Código das Sociedades Comerciais*, approved by Decree-Law 262/86, of 2 September, as amended).

In case of joint ventures, a quota company may sometimes be more suitable to ensure that none of the shareholders get any type of control over the Portuguese SPV.

A Portuguese holding company or foreign holding company interposing the investors and the Portuguese SPV may also be considered to facilitate repatriation of profits or exit scenarios.

2.3. INVESTMENT STRUCTURING

Typically, sponsor funding is provided through (i) share capital, (ii) supplementary capital contributions (*prestações suplementares*) or (iii) shareholder loans (*suprimentos*).

Share capital includes the funds that shareholders are required under the law or the articles of association to put in the company and which will be represented by quotas or shares in the company.

In private limited liability companies (*sociedades por quotas*) the minimum share capital is one euro, although each quota must have a nominal value of at least one euro, and the company's total share capital is the sum of its shareholders' quotas; in joint stock companies (*sociedades anónimas*) the minimum share capital is generally €50,000. Depending on the corporate governance model adopted and the applicable Companies Code provisions, a joint stock company may in some cases be managed by a single director.

Supplementary capital contributions are equity instruments which allow the injection of funds into the company without formal share capital increases and may be recovered by a resolution of the shareholders, subject to compliance with certain equity ratios.

Finally, shareholder loans also allow the injection of funds into the company but are recorded not as equity but as debt. These loans will rank as subordinated debt in the event of insolvency of the project company.

2.4. SHAREHOLDERS' AGREEMENTS

Where more than one equity investor is involved, shareholders' agreements play a key role in defining internal governance and the balance of power between investors and sponsors.

These agreements should establish the composition and voting rules of corporate bodies, such as the board of directors, and determine "reserved matters" requiring increased approval thresholds (e.g., qualified majority or unanimity).

For a data centre project, such reserved matters should include decisions on additional capital injections, entry into major financing arrangements, and the disposal of critical assets.

Equally important is the establishment of pre-emption rights to protect existing shareholders from dilution by giving them priority to acquire new or transferred shares.

2.5. FOREIGN INVESTMENT SCREENING

The Portuguese foreign direct investment ("FDI") screening mechanism may be triggered where a transaction results, directly or indirectly, in the acquisition of control over strategic assets by investors from outside the EU. Strategic assets under Portuguese law include infrastructure related to defence and national security, or to essential services in energy, transport and communications, under Decree-Law 138/2014, of 15 September 2014 (as subsequently amended), with the Council of Ministers empowered to oppose, on a reasoned and exceptional basis, such acquisitions by non-EU/EEA investors. Data centres are not automatically designated as a strategic asset category under that regime; however, as the role of data centres in the use of AI and access to communication and data services is increasingly important, medium to large scale data centres are likely to be considered strategic assets.

In May 2026, the European Parliament approved new FDI screening rules, adopted by the Council on 8 June 2026. Regulation (EU) 2026/1386 entered into force on 16 July 2026 and applies from 17 January 2028, replacing Regulation (EU) 2019/452. While the current framework is a cooperation mechanism between Member States, the new regulation introduces a mandatory screening regime in all EU countries covering a

minimum set of sectors that explicitly includes digital infrastructure; data centres, as core components of digital infrastructure, fall within its scope. The new rules also expand the scope of review to capture indirect investments structured through EU-based entities ultimately controlled by non-EU investors, preventing circumvention of the screening mechanism.

This means that, depending on the characteristics of the target, the applicable Portuguese screening regime and the Regulation's implementation, some investments in data centres, particularly those involving non-EU investors, may require prior notification and, in certain cases, approval before construction or acquisition can proceed.

2.6. TAX STRUCTURING

Taxation of the investment in data centres will be a critical aspect of equity investment, as it will directly impact returns and cash flows to the investors.

Portugal imposes withholding tax on payment of dividends and interest to non-residents, generally at domestic statutory rates. However, reduced rates or exemptions may be available under the EU Parent-Subsidiary Directive, the Interest and Royalties Directive, and the applicable double tax treaties, depending on the recipient's status, beneficial ownership, compliance with documentation requirements and applicable anti-abuse rules.

Portugal also charges stamp duty on certain transactions, including financing arrangements such as loans, as well as on guarantees and security interests. Notwithstanding, some exemptions may be available.

3. DEBT

3.1. LOAN FINANCING

3.1.1. GENERAL ASPECTS

Loan financing is the core source of debt for data centre projects in Portugal. It may take the form of corporate loans, where the borrower is the sponsor or a holding company relying on its overall creditworthiness, or project finance loans, where the borrower is an SPV and the loan is granted primarily on expected project cash flows, supported by a comprehensive security package.

3.1.2. FINANCE DOCUMENTS

In Portugal, finance documents will typically follow LMA-like precedents adapted to Portuguese law, with specific provisions reflecting the features of the project.

The lenders must ensure that key risks identified during the due diligence are properly reflected and mitigated in the finance documents.

In relation to data centres, it is of particular importance to consider:

- conditions precedent;
- covenants; and
- termination events.

Conditions precedent clauses typically require the borrower to present evidence of its capacity to enter into the transaction and to demonstrate that all regulatory, environmental and project-related conditions necessary for the relevant funding stage have been met. For data centre project finance transactions, these include, in addition to standard corporate documents and capacity and enforceability legal opinions, the items set out below:

- **Licensing**: evidence of the relevant licences and permits, including construction permit, applicable environmental licence ("TUA") and, where applicable, the PIN qualification;
- **Land rights**: evidence of valid and effective land rights over the project site (freehold title, surface rights deed or lease agreement, duly registered as applicable);
- **Executed and effective key project documents**: including EPC contracts, O&M agreements, power supply agreements and material hosting or colocation contracts;
- **Security**: establishment of the full security package; and
- **Minimum equity support**: shareholder equity commitment arrangements.

Subsequent utilisations will typically be subject to additional conditions, including construction milestones, absence of default and market disruption events, and compliance with gearing ratios.

The finance documents also include, in addition to the standard covenants, such as construction long stop date, financial covenants, negative pledge and restrictions on indebtedness, mergers and disposal of assets, the following project-specific covenants:

- **Restrictions on project documents**: typically, the borrower will be restricted from entering into, terminating, or amending any key project document without prior lender consent, with some exceptions, to ensure control on costs and revenue stability.
- **O&M and performance covenants**: lenders may impose obligations relating to the operation and maintenance of the facility, including maintenance schedules and maintenance reserve accounts to ensure replacement of critical equipment.
- **Counterparty and contract standards**: the finance documents may include requirements that key project contracts (e.g. colocation agreements) comply with agreed standards, including minimum tenure, minimum pricing and termination protection provisions.
- **Energy supply and sustainability covenants**: financings should include obligations relating to secured power supply (including PPAs), minimum renewable energy usage, and compliance with energy efficiency standards. The lenders may also

require reporting on sustainability metrics (e.g., PUE, carbon intensity) and adherence to ESG frameworks.

- **Tenant agreement**: the lenders will require the existence of a robust tenant agreement with a strong partner, such as a hyperscaler, a large utility or a data centre operator/owner with a proven track record and financial capability.
- **Insurance covenants**: beyond standard insurance requirements, lenders will specify tailored coverage for data centres, including cyber risk, business interruption (including from outages), and equipment breakdown, with appropriate limits and lender loss payee provisions.
- **Step-in and cure rights**: finance documents should ensure that lenders have robust step-in rights vis-à-vis key counterparties, allowing them to remedy breaches under project documents or replace key contractors/operators.

Termination provisions will also need to be carefully drafted to ensure lenders can take actions if certain material events related to the project which may affect the capacity of the borrower to repay the loan occur.

3.2. BOND FINANCING

3.2.1. TYPES OF BOND ISSUANCES

Portuguese data centre projects may access debt capital through several types of bond issuances, depending on the stage of the project, the profile of the issuer and the target investor base.

Project bonds, issued by the project SPV, are the most suitable structure for Portuguese data centre projects to refinance senior bank debt once the project is operational and generating stable cash flows. They may be structured with security packages mirroring senior loans and often benefit from credit enhancements (e.g. liquidity facilities or debt service reserve accounts). They may be placed with institutional investors, avoiding the need for a full prospectus but still requiring careful disclosure and compliance with EU and domestic placement rules.

Public bond offerings, admitted to trading on a regulated market (typically Euronext Lisbon or an equivalent European exchange), can be used. Public offerings may require a prospectus approved by the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*, "CMVM") under the EU Prospectus Regulation, although certain prospectus exemptions are available.

3.2.2. GREEN AND SUSTAINABILITY-LINKED BONDS

Data centres powered by renewable energy and designed for efficient cooling and heat reuse are well placed to access green and sustainability-linked financing. Under Decree-Law 84/2024, of 4 November 2024, Portuguese data centres with installed IT power demand of at least 500 kW are subject to mandatory energy performance reporting, including power usage effectiveness ("PUE"), water usage effectiveness ("WUE"), energy reuse factor ("ERF") and renewable energy factor ("REF"), metrics which can underpin reporting under green and sustainability-linked instruments.

The main instruments available are:

- **Green bonds**, where the proceeds are ring-fenced for financing or refinancing eligible green projects (for example, renewable-powered data centre facilities, energy-efficient cooling systems, or heat recovery installations). Issuers typically align with the ICMA Green Bond Principles or the EU Green Bond Standard under Regulation (EU) 2023/2631.
- **Sustainability-linked bonds**, where the financial terms (typically the coupon) are linked to the achievement of pre-defined sustainability performance targets, such as reductions in PUE, increases in the renewable energy factor, or water consumption targets. Unlike green bonds, the proceeds are not ring-fenced, which provides greater flexibility to the issuer.
- **EU Taxonomy-aligned instruments**, where the underlying investment is aligned with the technical screening criteria set out in the EU Taxonomy Regulation. Alignment can be an important factor in attracting capital from ESG-focused investors.

Alignment with the EU Green Bond Standard under Regulation (EU) 2023/2631 is generally voluntary unless the issuer elects to use that designation. Any EU Taxonomy alignment claim must be assessed against the applicable technical screening criteria and

disclosure requirements then in force; PUE, WUE, ERF and REF metrics do not by themselves establish that a project is taxonomy-aligned or eligible for green financing, and sustainability-linked instruments in particular require robust target calibration, reporting and verification.

3.2.3. REGULATORY FRAMEWORK

Bond issuances by a Portuguese issuer are primarily governed by the Portuguese Securities Code (*Código dos Valores Mobiliários*) and Companies Code. Public offerings and admissions to trading are additionally subject to EU-level regulation, including the Prospectus Regulation, Market Abuse Regulation, Transparency Directive and, where applicable, the Green Bond Regulation.

Key legal considerations for a bond issuance include:

- **Issuer capacity**: under the Companies Code, joint stock companies (*sociedades anónimas*) may issue bonds if, after the issuance, they have a financial autonomy ratio of at least 35%. Companies that do not comply with this ratio may still issue bonds if they meet certain conditions (e.g. minimum bond denomination of €100,000).
- **Security package**: bonds may benefit from a security package equivalent to that of loan financings, typically held by a security agent for the benefit of the bondholders. In project bond structures, the security package often includes mortgages over the land and building, pledges of shares and bank accounts, and assignments of project contracts and insurance proceeds.
- **Disclosure obligations**: issuers of listed bonds are subject to ongoing disclosure obligations under Portuguese and EU law, including, where applicable, the publication of annual and semi-annual financial reports, disclosure of inside information, and notifications of major holdings and transactions by managers.
- **Bondholders' representation**: Portuguese law provides for a bondholders' common representative (*representante comum dos obrigacionistas*) and a general meeting of bondholders, with powers to approve amendments to bond terms and decide on behalf of bondholders in distressed scenarios.
- **Tax treatment**: interest on bonds issued by Portuguese issuers is subject to withholding tax at a rate of 28% (or 25% for legal entities), which may be reduced

or eliminated under applicable double tax treaties or under the domestic debt-securities exemption regime applicable to non-resident beneficial owners that comply with the applicable information and registration requirements.

3.3. SECURITY PACKAGE

Under Portuguese law, the typical forms of security available to lenders are the mortgage (*hipoteca*), the pledge (*penhor*) and the assignment of proceeds (*consignação de rendimentos*).

The choice of the appropriate security package for a data centre transaction must take into account the default risk, the nature and value of the project assets, the business activity of the borrower and the purpose of the financing.

In project-financed data centre transactions, it is common practice to require a comprehensive security package covering substantially all project assets and rights. The package typically includes some or all of the following security interests:

- mortgage over the real estate (or pledge or assignment of surface rights) where the data centre is located;
- pledge of shares (or of quotas) of the project company and, where applicable, of intermediate holding companies;
- pledge of the bank accounts of the project company, including project accounts, debt service reserve accounts and insurance proceeds accounts;
- assignment by way of security or pledge of rights under EPC, O&M, power supply agreements and insurance policies;
- assignment by way of security or pledge of receivables arising from hosting, colocation and other revenue contracts; and
- pledge of movable assets, including IT and electro-mechanical equipment, where relevant.

The lenders will also typically require direct agreements with key counterparties (the EPC contractor, O&M operator, data centre tenant(s)/customer(s) and grid operator), granting step-in rights and ensuring continuity of the project in distressed scenarios.

3.4. INSOLVENCY ISSUES

In addition to the security package, lenders should also consider the Portuguese insolvency framework codified by Decree-Law 53/2004, of 18 March 2004, as amended (Insolvency Code).

A key consideration in insolvency scenarios is the ranking of the lenders' claim. Article 47(4) of the Insolvency Code distinguishes between:

- preferred claims *(créditos privilegiados*), which entail a preference over the company's assets;
- secured claims (*créditos garantidos*), which benefit from security over the company's assets;
- common claims (*créditos comuns*), which do not benefit from security or preference, but are not treated as subordinated debts; and
- subordinated claims (*créditos subordinados*), which include claims held by persons especially related to the debtor (such as shareholders holding an interest for which they are legally liable, where that relationship already existed when the claim arose or the claim was transferred to them within the two years preceding the insolvency), and interest on unsecured claims accruing after the insolvency declaration.

Portuguese law establishes specific preferred claims in respect of both movable and immovable assets, including credits of the State and local authorities for taxes and employee claims.

The lenders must also assess the risk that guarantees and security may be voided. Under the Insolvency Code, the following transactions, among others, may be set aside by the insolvency administrator under certain conditions:

- personal guarantees granted by the insolvent prior to the initiation of insolvency proceedings which relate to transactions not in the best interest of the insolvent;
- security interests granted in respect of pre-existing obligations, or new obligations replacing such pre-existing obligations; and
- security interests granted simultaneously with the creation of the secured obligations prior to the initiation of insolvency proceedings.

From a practical perspective, the Portuguese insolvency framework has direct implications for the structuring of data centre financings. In particular, the lenders must carefully assess the risk of clawback (avoidance) of security interests and guarantees granted prior to insolvency, especially where these secure pre-existing obligations or are provided by entities other than the borrower.

The applicable look-back period depends on the type of act in question. As a general rule, acts prejudicial to the insolvency estate may be set aside if performed within the two years before the start of the insolvency proceedings, and the law presumes bad faith where the counterparty is a person especially related to the insolvent (including shareholders and group companies). However, several categories of acts, including the grant of new security over pre-existing obligations and guarantees not reflecting a real interest for the debtor, may be voidable without proof of bad faith if granted within shorter periods preceding that date (six months, or 60 days for security granted simultaneously with the secured obligation).

4. INVESTOR AND LENDER DUE DILIGENCE

Legal due diligence on a Portuguese data centre project should identify risks affecting construction, operation and enforceability of the lenders' security, flagging any issue that is a condition precedent to drawdown and matters for ongoing monitoring.

4.1. CORPORATE STRUCTURE AND PROJECT SPONSORS

The lenders must review the legal structure of the project company and its sponsors to confirm capacity to borrow and to grant security. This review includes, among other aspects:

- verification of incorporation, legal existence, and good standing of the borrower and the shareholders;
- assessment of ownership structure, including ultimate beneficial ownership;
- review of constitutional documents (certificate of registration and articles of association) to ensure borrowing capacity and authority;
- review of shareholder agreements, joint venture arrangements, and governance provisions.

Where a shareholder or group company, rather than the project company itself, grants security, lenders should confirm it has a corporate benefit in doing so, since Portuguese law restricts personal guarantees or security granted outside a group relationship and prohibits a company from funding or guaranteeing the acquisition of its own shares, on penalty of the security being voided.

4.2. LAND RIGHTS AND TITLE

The lenders must confirm the project holds valid land rights for its chosen site. Legal due diligence on real estate should cover:

- confirmation of ownership or long-term leasehold rights over the site;
- verification of title, including absence of encumbrances or restrictions;
- zoning and land-use compliance, ensuring the site is legally authorised for data centre operations;
- easements and rights of access for utilities (power, fibre connectivity, water).

Rights *in rem* (freehold or surface rights) must be created and registered by notarial or attorney deed and are subject to such registration to be enforceable against third parties, whereas rights *in personam*, such as leases, bind only the contracting parties and generally require no registration. A lease exceeding six years must be registered with the land registry to be enforceable against third parties, and the maximum lease term is thirty years. Surface rights, unlike leasehold rights, may be mortgaged to secure financing, making them the preferred structure for lender-backed projects where the developer does not own the land outright. The due diligence should also confirm whether the site's zoning status was tested through a preliminary information request ("PIP") to the municipality, binding once issued, confirming the absence of adverse conditions, administrative easements or public utility restrictions.

4.3. PERMITS, LICENCES, AND REGULATORY COMPLIANCE

Data centre operations are classified as data processing and hosting activities (CAE 63110) and, as service activities, generally fall outside industrial licensing under the SIR regime. The lenders should ensure that before construction begins the project company has obtained:

- all required construction permits;
- all environmental approvals; and
- all other relevant authorisations (e.g. energy production licence, if applicable).

Data centres are not expressly listed in the environmental impact assessment ("EIA") regime, but large facilities, and those using high water volumes for cooling or requiring on-site generation or high-voltage lines, are very likely to trigger a mandatory environmental impact assessment, so the due diligence should confirm whether an environmental impact declaration (*Declaração de Impacto Ambiental*, "DIA") has been obtained or is still pending. The due diligence should also confirm whether the project has secured the environmental licence (*Título Único Ambiental*, "TUA"), which consolidates the environmental impact declaration with any water, hazardous substances, pressure equipment, waste management and greenhouse gas permits applicable to the facility and underpins both construction and operation.

Certain data centre projects may also qualify as National Interest Projects (*Projeto de Interesse Nacional*, "PIN") under Decree-Law 154/2013, of 5 November 2013. The Standing Committee for Investor Support (*Comissão Permanente de Apoio ao Investidor*, "CPAI") decides on PIN recognition within 30 days of the promoter's application and, in that decision, designates a single process manager (*Gestor de Processo*), depending on the nature of the project, who acts as the promoter's single point of contact with the public administration for all approvals, opinions, decisions and licences needed to implement the project.

PIN status gives the project priority handling in licensing procedures before any public administration entity and triggers a special procedural regime, including simultaneous (rather than sequential) processing of central administration procedures, a single public consultation period, simplification of territorial planning instruments, and the reduction of internal procedural deadlines by up to half (capped, for the issuing of opinions, at 30 days), together with tacit positive opinions and tacit approval where entities fail to respond in time. PIN recognition does not exempt the project from the applicable legal requirements or create rights in itself, but the resulting procedural acceleration and single point of contact can shorten the path to construction and operation and make the project more attractive to investors and lenders.

4.4. GRID ACCESS

The due diligence should confirm that the project has obtained, or is on track to obtain, connection conditions from the grid operator and, where the site falls within a high-

demand zone (*Zona de Grande Procura*, "ZGP"), a formal connection capacity title under the ZGP regime. Grid access can take longer to secure than construction permits and is often a critical path for the financing timetable; a data centre project may also require network reinforcement arrangements, licensing for private generation or storage, agreements with the network operator, and evidence of available and secured capacity.

4.5. PROJECT AGREEMENTS

4.5.1. CONSTRUCTION CONTRACTS

In the construction phase, lenders should ensure that the EPC or design-and-build arrangements mitigate the construction risks, ideally through a turnkey, fixed-price EPC contract with a clearly defined scope covering design, procurement, construction and commissioning, with disbursements linked to objective milestones. Critical review points include the completion and longstop dates, delay liquidated damages, and performance guarantees for capacity, uptime and efficiency metrics such as PUE.

The lenders should also assess the contractor's credit support (parent company guarantees, performance bonds and retention mechanisms), the termination provisions and step-in rights, and the liability regime, including caps and exclusions.

4.5.2. OPERATION AND MAINTENANCE ("O&M") AGREEMENTS

The legal review of the O&M agreement should focus on the scope of services, ensuring the operator is responsible for comprehensive maintenance, monitoring and facility management, including lifecycle replacements, with clear service levels and KPIs aligned with recognised data centre standards, response and repair times, and penalties for underperformance. The lenders should also review the term (aligned with the financing maturity), step-in and termination rights, transition arrangements to avoid operational disruption, and liability provisions and indemnities, particularly where operational failures could lead to customer losses.

4.5.3. CUSTOMER CONTRACTS (COLOCATION, HYPERSCALE, WHOLESALE)

Customer contracts are central to the data centre project and must be reviewed in detail. The lenders must examine whether agreements are retail colocation, wholesale

arrangements, or build-to-suit contracts with hyperscale clients, with particular attention to how responsibilities for space, power, cooling and connectivity are allocated, and to pricing mechanisms, including fixed capacity charges, minimum payment commitments (such as take-or-pay provisions), usage-based components, and escalation clauses linked to inflation or energy costs.

4.5.4. POWER SUPPLY AND ENERGY AGREEMENTS

Power supply arrangements are important in data centre projects, given that electricity is the primary operating cost and a key determinant of reliability. Legal due diligence must examine the structure of supply arrangements, including grid connection agreements, capacity rights and, where applicable, long-term power purchase agreements ("PPAs"), and the pricing framework, distinguishing fixed tariffs from variable or index-linked pricing.

4.5.5. CONNECTIVITY AND TELECOMMUNICATIONS AGREEMENTS

Connectivity is also important to data centres. The due diligence should cover the agreements governing access to fibre networks and interconnection points, focusing on sufficient capacity and scalability, redundancy through multiple carriers and routes, and contractual terms (duration and pricing) consistent with the overall financing structure. Resilience against single points of failure is a key consideration, particularly for high-specification facilities serving hyperscale clients.

4.5.6. EQUIPMENT SUPPLY AGREEMENTS

Data centre operations depend on specialised equipment such as servers, storage systems, networking equipment and cooling systems. The legal due diligence should review supply agreements to confirm delivery timelines are aligned with the construction schedule, that acceptance testing procedures are clearly defined, and that warranty provisions (scope, duration and remedies for defects) and long-term maintenance and support arrangements, including access to spare parts and technical assistance, are adequate.

4.6. INTELLECTUAL PROPERTY AND TECHNOLOGY RIGHTS

The operation of data centres relies on proprietary systems and software, much of it licensed rather than owned. The due diligence should verify:

- the ownership or licensing of critical software and technologies;
- the validity and scope of IP licences; and
- the absence of infringement claims.

4.7. INSURANCE COVERAGE

Data centres concentrate high-value equipment and are highly exposed to business interruption in the event of an outage. The insurance consultants should confirm that the project has the relevant insurances, including at least during the construction phase, construction all-risk insurance, and after the construction phase, multi-risk and equipment insurance, business interruption and civil liability.

Lenders will usually require cyber, business interruption and equipment breakdown cover to be in place by financial close.

4.8. ESG AND SUSTAINABILITY CONSIDERATIONS

ESG compliance is increasingly relevant, both for regulatory purposes and because it can affect financing terms. The following matters should be considered:

- energy efficiency commitments and use of renewable energy;
- water usage and cooling systems; and
- community and environmental impact.

The due diligence should confirm the project's actual power usage effectiveness, water usage effectiveness, energy reuse factor and renewable energy factor, the metrics Portuguese data centres above 500 kW IT demand must disclose under Decree-Law 84/2024, since any green or sustainability-linked bond will rely on these same figures to support its sustainability claims.

FINAL REMARKS

Financing a data centre in Portugal depends on timing: each source of capital becomes available only once specific risks have been resolved. In practice, sponsors and investors should bear in mind the following points:

- **Financing must match the project's risk stage**. Equity must fund land acquisition, licensing and early construction because binding tenant commitments and bank debt are not available until environmental, construction and grid access milestones are cleared. The sponsors who approach lenders before these milestones are reached, or before a creditworthy offtake arrangement is in place, will struggle to obtain debt financing.
- **Governance matters.** The lenders and co-investors review shareholders' agreements as closely as the project contracts, since weak governance can be as damaging to bankability as a gap in the security package. In projects involving multiple investors, such as local landowners, construction companies or early-stage investors, reserved matters, pre-emption rights, deadlock mechanisms and exit provisions (tag-along, drag-along, call and put options) should be negotiated and documented at the outset.
- **Data centre key issues**. Beyond the standard corporate conditions precedent, lenders will expect a defined position on licensing status, registered land rights, executed EPC, O&M and power supply agreements.
- **Security package.** A mortgage over real estate or surface rights, pledges of shares and project accounts, assignments over project contracts and insurance, and direct agreements with key counterparties are all typically required by lenders under the financing.
- **Legal due diligence**. Investors and lenders will not commit funds until legal due diligence has confirmed title to the site, the status of permits and grid access, and the terms of the key project agreements. Issues identified late, such as unregistered encumbrances, licences held by an entity other than the project company or change-of-control restrictions in customer or power supply contracts, can delay financial close or result in additional conditions precedent.

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ABOUT PORTUGAL

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.

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.

POLITICAL SYSTEM

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, led by a Prime Minister, depends on the parliament's support.

The President of the Republic has limited powers but can influence the Parliament and the Government and dissolve the Parliament in extraordinary circumstances.

INTERNATIONAL RELATIONS

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). Portugal is a member of the United Nations, NATO and the OECD.

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.



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