



WHYPORTUGAL 2020

# Doing Business in Portugal



MACEDO VITORINO & ASSOCIADOS  
Sociedade de Advogados, RL

# About us

Macedo Vitorino & Associados was established in 1996, focusing its activity on advising domestic and foreign clients in specific activity sectors, including banking, telecommunications, energy and infrastructures.

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 and labour law
- Foreign investment, mergers & acquisitions and privatisations
- Real estate acquisition and disposal
- Tax

If you want to find out more about Macedo Vitorino & Associados please visit our website at [www.macedovitorino.com](http://www.macedovitorino.com)

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# Foreword

Like the rest of the world, Portugal has been suffering from the devastating impact of the coronavirus pandemic. The measures adopted to control and prevent the spread of COVID-19 had a significant impact on the country's economy. According to the Portuguese Finance Ministry estimation, the Portuguese GDP will fall up to 8.5% until the end of 2020, and will recover 5.4% in 2021. After falling 22% this year, exports are also expected to recover 10.9% next year.

As expected, tourism, textile and footwear sectors, which are highly dependent on export markets, were severely hit.

However, investment in tourism, real estate, renewable energy and other longer-term projects in Portugal maintain their course. Despite the present difficulties, local and international investors remain confident in longer term prospects and in the resurgence of tourism in the post-covid era.

Meanwhile, the Government announced investments in 85 infrastructure projects over the next 10 years, supported by the European Union: EUR. 21,600 Million in the transportation sector, mainly in upgrading or building new railroads and subway infrastructure, EUR. 13,000 Million in renewable energy and EUR. 7,400 Million in environment related investments.

Despite the mess caused by the pandemic, EuCham (European Chamber) reported Portugal, according to its economic environment, as the 19th best European country to do business in 2020, and the World Bank's "Doing Business 2020" ranked Portugal as the 39th among the 190 world's economies, being the 1st when it comes to documentary compliance, border compliance and domestic transport.

This guide reviews the main aspects to be considered by foreign investors looking at Portugal as a place to invest, such as how to set up of a business, government incentives, employment rules, tax system, intellectual property protection, investing in real estate and judicial system.

For more information go to [www.macedovitorino.com/en/why-portugal](http://www.macedovitorino.com/en/why-portugal)

# General information

## Territory, population and language

### Lisbon

Capital

Main district capitals

Oporto, Coimbra,  
Aveiro, Leiria and  
Faro

92,152 km<sup>2</sup>

Territory

10.2

million

Population

€19,826

GDP per capita

Portugal is situated in the southwest coast of Europe with borders only with Spain. With a territory of 92,152 Km<sup>2</sup> 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 last century's 50s, 60's and 70's emigration to other European countries and America was common, especially to Germany, France and Switzerland but also to the United States and Canada.

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

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

Portuguese is today the sixth most spoken language in the world, spoken by around 261 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 main tourist destinations. Although most Portuguese nationals do not speak Spanish, most people can understand it. French is less spoken since English replaced it as the second language in schools but is still spoken by some people.

## Political system

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

Portugal is a parliamentary republic. The legislative power lays 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 led by a Prime Minister, who holds the executive power. Currently, the country's Prime Minister is António Costa, the leader of the Socialist Party.

The President of the Republic has limited powers but has the power to influence the Parliament's and the Government's decisions, as well as the power to dissolve the Parliament in extraordinary circumstances. Marcelo Rebelo de Sousa is currently the President of the Republic and was elected in January 2016.

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

1/5 of the members of the parliament can also require the constitutional revision of laws and decree-laws enacted by the Parliament of the Government. The Constitutional Court's decisions are binding for all courts and public authorities.

Portugal is a member of the EU since 1986, a founding member of the Euro and of the Portuguese Speaking Countries Community (*Comunidade dos Países de Língua Portuguesa, CPLP*), which groups all Portuguese speaking countries. Portugal is also 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 19 European countries. The Euro is the second most traded currency in the World after the US Dollar.

The currency symbol is «EUR. ». 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 euros bank note is no longer in production because it is not accepted in all EU countries and was preferred by organised crime.

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 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 modern, 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, although credit conditions have tightened as a result of stronger regulatory pressure.

Portuguese capital markets are organised following domestic legislation codified in the Securities Code (CVM) and European regulations and directives. The Portuguese stock Exchange, Euronext Lisbon, is part of the Euronext Group.

Portugal was the pioneer in establishing a countrywide ATM network, which allows the withdrawal of cash, money transfers and other services across the country.

Debit and major credit cards (especially Visa and MasterCard) are accepted in the majority of establishments in Portugal.

# Investment incentives

## Overview

In order to promote and attract investment, Portugal offers national and foreign investors investment incentives.

Incentives may come as financial incentives, repayable or non-refundable, tax benefits and co-financing. Exceptionally, specific 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 2020» programme established through an agreement with EU covering the period from 2014 to 2020;
- Tax incentives granted under the Investment Tax Code which aim to promote the competitiveness of the Portuguese economy; and
- Incentives programmes designed for specific situations, such as the creation of 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 the implementation of projects considered to be of «potential national interest» the so-called «*projetos de interesse nacional*» or PIN projects.

€25.5 bn

Amount of structural funds allocated to Portugal by the EU until 2020.

## Portugal 2020 program

The European Commission and Portugal created a partnership for the period from 2014 thru 2020, called «Portugal 2020». EUR 25,000 Million for the project came from European funds.

The Portugal 2020 programme is formed by 16 operational programmes, as well as several territorial cooperation programmes.

The analysis and selection of applications for the 'Portugal 2020' Program is the responsibility of the Managing Authorities of the Operational Programs.

Portugal 2020 Program has as main goals:

- To promote the production of tradable goods and services, internationalisation of the economy and qualification of the specialisation profile of the Portuguese economy;
- To strengthen investment in education, including advanced training;
- To increase capacity to integrate people at risk of poverty and fighting social exclusion;
- To promote territorial cohesion and competitiveness, especially in low population density cities; and
- To support the State reform program, ensuring that community funds contribute to modernise and improve the capacity of the Public Administration, as well as to the reorganise of the models for the provision of public goods and services.

The applications for Portugal 2020 incentives are made through an online platform, [Balcão 2020](#), facilitates the process. Balcão 2020 also contains the applicable laws and regulations, support guidelines and indicates the relevant deadlines for application procedures.

Portugal 2020 aims to achieve concrete results. As a condition for the approval of the project, the beneficiary must commit to its material and financial execution, as well as to achieve the results negotiated. The achievement of the targets to which the beneficiary is committed is subject to audits and monitoring.

## PIN projects

The Project Recognition and Monitoring System is a monitoring mechanism for projects that are 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 are benefiting 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 EUR 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;
- Having a significant part of the company connected to a patent developed by the company itself;
- Noticeable environmental interest;

## €25 million

Minimum investment for a project to be considered of national interest and be eligible to benefit from a unified and fast track approval procedure.

- The company has to be heavily connected and interested in export matters, with a minimum of 50% of its turnover directed to international markets; or
- Outstanding production of tradable goods and services.

For the operationalisation of 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.

To the projects recognised as PIN a process manager, responsible for monitoring the administrative procedures, is assigned.,

The recognition of a project as a PIN ensures a priority treatment 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 the legally stipulated activities, may, until December 31, 2020, benefit from tax incentives, for a period of up to ten years counting from the completion of the investment project, provided that the amount invested is equal to or greater than three million euros. Such projects regard: (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 prove to be technically, economically and financially viable, provide for the creation or maintenance of jobs and fulfil at least one of the following conditions, may be granted access to the contractually defined fiscal benefits attributed to productive investment:

- Be relevant to the strategic development of the national economy;
- Substantially contribute to the reduction of regional asymmetries; and
- Contribute to technological innovation and national scientific research, improve the country's environmental awareness and structures or enhance competitiveness and productivity.

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

The investment incentives may be withdrawn:

- If the project developer fails to comply with the contractually defined obligations;
- If the project developer doesn't fulfil his/hers/its tax obligations; or
- If the project developer provides false information about his/hers or the project's situation or presents tampered data in the presentation, appraisal and monitoring of projects.

The termination of the contract will cause the loss of the tax benefits and the obligation to pay back the uncollected tax revenues plus interest.

Tax incentives may be granted to business research and development, which allows CIT taxpayers with residence in Portugal engaged in agricultural, industrial, commercial and services activities or non-residents with a permanent business establishment in the territory to deduct from the amount of CIT collection the amount corresponding to research and development expenditure in the part that has not received outright financial contribution from the State, and provided that it is carried out in the taxation periods between January 2014 and the end of 2020.

To qualify for the tax deductions mentioned above, investors must meet the following conditions cumulatively:

- The taxable profit cannot be determined by indirect methods; and

- The applicant cannot have any unpaid State and Social Security taxes or contributions.

Investment incentives must have one of these forms:

- A contract between the State and the investor, designated by contractual incentives;
- Autonomous incentives, depending on specific situations that are supposed to be protected; or
- Assignment conceded by State funded programs.

# Residence permits

## European Union citizens

Citizens of EU countries, Iceland, Liechtenstein, Norway, Switzerland, Andorra and Brazil do not need a visa to travel to Portugal. Holding a valid identification document or a passport issued by the country of origin is sufficient.

When a citizen from one of those countries intends to live in Portugal for more than three months, she/he must request a registration certificate from the municipal council of their area of residence in Portugal, until 30 days after the first three months living in the country, in order to formalize their residence permit.

Five consecutive years after obtaining the Certificate of Registration, a permanent residence certificate must be requested to be issued by the Foreigners and Borders Service (SEF - *Serviço de Estrangeiros e Fronteiras*).

## Citizens of non-EU countries

To travel to Portuguese territory, citizens of non-EU countries must have a valid visa and a valid travel document and cannot be flagged in any way by the Integrated Service Information System of Foreigners and Borders Service (SEF) or the Schengen Information System.

Citizens of non-EU countries who wish to live in Portugal must obtain a residence visa at a Portuguese embassy in their country of residence. A residence visa is a long-term visa that allows its holders to travel to and stay in Portugal for four months and to apply for a permanent residence permit issued by the SEF. There are several sub-types of residence visas, such as:

- To exercise a professional activity under an employment contract;
- To start a new business or exercise an independent professional activity;
- To teach or perform other highly qualified or cultural activities;
- To do research and/or study for exchange of higher education and secondary education students, internships or volunteering; and
- Family reunification reasons

Foreign citizens who do not have sufficient subsistence means, either for the period of their stay or for the trip, and the citizens who cannot acquire such means legally, are not allowed to enter Portugal,

## Golden visa

The Residence Permit for Investment Activity, commonly named «golden visa», is a quick solution for foreign investors from.

This system makes it possible to grant residence permits for investment activities to citizens of non-EU countries who wish to make a significant investment in Portugal.

### Golden Visas grant their holders the right to move freely within Portugal and the Schengen Area.

In addition to the general requirements, golden visas also require their holders to comply with their obligation to invest in Portugal, by:

- Carrying out transfers of a minimum amount of EUR. 1,000,000;
- Creating at least ten job positions;
- Acquiring real estate at least EUR. 500,000 worth;
- Acquiring and renovating 30 year-old buildings, or older, or of buildings located in an area of urban renovation, at least EUR. 350,000 worth;
- Carrying out a transfer of EUR. 350,000 destined to research studies in public or private scientific research institutions, integrated in the national scientific and technological system;
- Conducting a cash transfer of EUR. 250,000 to support artistic productions or the recovery of national cultural heritage;
- Carrying out a cash transfer of EUR. 350,000 for the acquisition of shares in investment funds or venture capital funds for the capitalisation of companies; and
- Conducting a cash transfer of EUR. 350,000 to invest in the creation of a company or giving an equal contribution to an existing company plus the creation of at least five job positions.

The residence permit can be renewed for periods of two years, provided that the applicant proves to have maintained any of the above-mentioned investment requirements.

The investment can be made directly by the applicant or indirectly by a company owned by the applicant with head-office in Portugal or in another EU Member State with a permanent business establishment in Portugal.

## How to obtain a golden visa

To obtain a Golden Visa the applicants must:

**€250.000**

Minimum investment amount in order to be eligible for Golden Visa.

- Be physically present in Portugal, have or rent a residence in the country and have sufficient means to support themselves;
- Be registered in the Portuguese Social Security Authorities if 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 for the purpose of banning their entry in the country;
- Hold a valid Schengen visa; and
- Apply for the legalization of the stay in Portugal within 90 days after the first entry in Portugal.

Golden visas can be requested online (<http://ari.sef.pt>), SEF's offices, Portuguese consulates and embassies.

The documents related to the investment must be brought in person.

The administrative cost of the residence permit is approximately EUR. 5,600. If all requirements are fulfilled, an authorisation will be granted within 60 days counting from the submission of the form and documents.

The holder of a golden visa may benefit from special taxation applicable to non-habitual residents and is entitled to apply for family reunification.

Golden visa holders are eligible to obtain the permanent residence right, which is extended to their family members, five years after holding a temporary residence permit in Portugal granted by the golden visa.

# 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, that are 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.

To incorporate a branch, registering the parent company corporate resolution approving the creation of the branch is enough. A branch has no equity requirement, although the parent company may allocate capital to the branch for operational purposes.

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 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, whereas 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 EUR. 0.01, while 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 or higher than one euro. In joint stock companies the minimum share capital is EUR. 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, but in this case the liability of the sole shareholder is not limited, as he/she is personally and unlimitedly liable in the case of insolvency of the company if the company's assets are not kept separately from the personal assets of the shareholder.

Unlike the shares of quota companies which are registered with the National Registry of Companies (RNPC - *Registo Nacional de Pessoas Coletivas*), 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 to 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 on 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 done by 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 EUR. 1,500,000;
- The turnover exceeds EUR. 3,000,000; and/or
- The average number of workers during the year exceeds 50.

## 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 EUR. 20,000,000;

(ii) The turnover exceeds EUR. 40,000,000;

(iii) The average number of employees during the year exceeds 250.

- Board of Directors, Audit Committee and external auditor; and
- Executive Board, General and Supervisory Board and external auditor.

When the company's share capital is less than 200,000 euros, no board is required and only a single manager may be appointed. When the company's share capital is equal or higher than EUR. 200,000 a Board of Directors must be appointed.

The board of directors is responsible 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 or the business, such as finance, operations *etc.*

The general meeting may not resolve on management matters, except when specifically requested by the board of directors. It is the responsibility of the general meeting to resolve on 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;
- 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 of the audit committee; and
- Mergers, spin-offs or change 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 of the company only need to go to an authorised office to incorporate the company and are only required to present documents proving their identity, capacity and powers to execute the deed, choose one of the pre-approved firms 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 to the Tax Authorities.

The company's equity capital must be deposited in five business days following the 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 in the same day and have a cost of EUR. 360.

## Online incorporation

The online incorporation of companies is carried out by filling an online form and submitting the documents through [www.portaldocidadao.pt](http://www.portaldocidadao.pt).

## 6.5 days

Time to set up a business in Portugal.

*Doing Business 2020*

## 9.3 days

OECD High Income Average  
*Doing Business 2020*

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 founder submitted their own draft articles of association.

The cost of the incorporation using this modality is EUR. 180 if the articles of association have one of the pre-approved forms and EUR. 380 if the founder has proposed his/her 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](http://www.portaldaempresa.pt), at [www.irn.mj.pt](http://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 done 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
- Submitting annual financial statements to the banking regulatory authority (*Banco de Portugal*, BdP) for statistical purposes.

This single statement must be electronically submitted by the Certified Auditor each year and until the 15<sup>th</sup> day of the 7<sup>th</sup> month after the end of the relevant financial period, which for most companies will take place on 15 July of each year.

The simplified corporate information system allows companies to comply with several reporting obligations in a single document.

# 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 parts act separately, acting together only when it is needed to pursue a particular objective or in the development of 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 parties benefit from a broad freedom in determining their obligations; in external unincorporated joint ventures the parties are obliged to designate a steering body, a supervisory board and a leader.

The leader has powers of internal nature, such as the organisation and implementation of cooperation among all parties, and of 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 through which they constitute a new entity endowed with legal personality in order to improve the conditions of exercise or result of the activities that they develop separately.

The ACE has its own organisational structure, with three fundamental bodies: general meeting, board (management and representation body) and the 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.

## 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 comparing 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 by an Assembly of Members, that act 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 is 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 (CIT) rate is 21%. A municipal surcharge of up to 1.5% and State surcharge ranging from 3% to 9% applied only to companies with an income worth more than EUR. 1.5 Million.

Personal income tax (PIT) rates range from 14.5% 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%;

**Portugal offers incentives to foreign citizens who change their residence tax to Portugal through the RNH regime for non-frequent residents, allowing a 20% special income tax rate.**

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*), responsible for the management of taxes in according to the rates defined by the tax legislation, approved by the Assembly of the Republic.

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 permanent establishment in Portugal are subject to corporate income tax (CIT).

In Portugal, an establishment is considered "permanent" when a foreign company carries out its activity in Portugal through a permanent representation as well as if a person acts on behalf of the company in Portugal and has broker powers and powers to enter into deals in the name of the company.

The general CIT rate in the mainland is 21%, and if it is a resident entity, it is levied on the company's taxable income. If it is a permanent establishment of a foreign company it is its taxable profit of the activity in Portugal if it is in Azores, the general rate of CIT is 16.8% and in Madeira is 20%.

In the case of a small or medium-sized enterprise, the rate to be applied to the first EUR. 15,000 of the taxable income is 17% in the continent, 13% in Madeira and 13.6% in 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.

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

Presently Portugal's corporate tax rate (21%) is below the EU average (21,30) and the Global average (23,03%).

## Municipal surcharge

CIT is added with the municipal surcharge levied on the taxable amount 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 EUR. 150,000 in the previous year.

Most municipalities apply the maximum rate of 1.5%, such as Lisbon, Loures, Setúbal, Oporto, Vila Nova de Gaia, Braga, Guimarães, Évora and Faro. Oeiras with 1.4% and Cascais with 1.25% are examples of municipalities near Lisbon with slightly lower rates.

21%

Portuguese Corporate Income  
Tax Rate

Up to 1.5%

municipal surcharge

## State surtax

The taxable profit over EUR. 1,500,000, is subject to the state surtax, which is calculated according to the following rates:

- From EUR. 1.5 million to EUR. 7.5 million: 3%;
- From EUR. 7.5 million to EUR. 35 million: 5%; and
- Over EUR. 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: 10% to 35%;
- Representation expenses: 10%; and
- Unbilled allowances to costumers: 5%.

## Foreign companies' taxation

Non-resident companies that do not have a permanent establishment in Portugal may also be subject to CIT 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% or 10% under double taxation agreements.

The payment of dividends to companies established in another State-Member 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 are exempt, provided that the company is an eligible company under the Parent Companies Directive. Interest and royalties are exempt from withholding tax if the payment is made to an affiliated company in another Member State of the European Union, provided that the 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 CIT. Capital gains arising from the sale of shares and other securities issued by companies resident in Portugal might be CIT exempt unless:

- The seller has his 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 a EU Member State, a 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 (PIT) 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 14.5% and 48%.

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

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

Work income is subject to withholding taxes which are different according to the income and worker's family situation. Some benefits may be exempt from IRS 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 EUR. 200,000, taxpayers are covered by the simplified regime under which taxable income is determined by the application of coefficients unless they choose to have their income calculated using his/her/its accounts.

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-permanent residents' regime

Non-residents in Portugal may choose to become tax residents in Portugal under the regime of non-frequent resident (*residente não habitual*, RNH) and thus benefit from a more favourable tax regime on certain income of Portuguese and foreign origin, without the need to make investments.

To obtain the RNH status the following requirements must be fulfilled:

- Not having been a Portuguese tax resident in the five preceding years;
- To be registered as a tax resident and requesting the RNH status upon such registration or by 31 March of the following year; and
- In case of employment income obtained in Portugal and self-employment income obtained both in and outside of Portugal, having a «high value-added» activity.

High value-added activities eligible for RNH status include, among others, architects, engineers, plastic artists, actors and musicians, auditors, doctors and dentists, teachers and psychologists, liberal professions, technicians and similar and investors, directors and managers.

The main advantages of the RNH regime are:

- Employment and self-employment income obtained in Portugal will be subject to a 20% flat rate;
- Pensions obtained outside of Portugal will be PIT exempt; and

- Other foreign source income will be tax exempt, provided it may be taxed outside of Portugal under the applicable tax conventions or the OECD model (if not a tax haven) or, in case of employment income, it is effectively taxed in the source country.

These advantages will extend over a period of ten consecutive years, including the year of registration as a tax resident in Portugal. The enjoyment of the right to be taxed as a non-permanent resident, in each year of the ten-year period, depends on being made, in that year, an evaluation of the criteria so that it can be concluded the existence of residence in Portuguese territory.

If it is not possible to be taxed according to this regime in one of those years, the entitlement to receive such right will be renewed in any of the following years, within the mentioned 10-year period, once it is considered again as resident for PIT purposes.

The application for registration as a habitual resident can only be filled after registering as a resident in Portuguese territory.

Other benefits of this regime include such as a stamp duty exemption on donations or inheritances for the spouse, descendants or ascendants of the beneficiary and a stamp duty rate of 10% on donations or inheritances for other individuals and family members.

## Social security contributions

Income from employees, self-employed workers and members of the corporate bodies is 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 case of contracting entities, 10% if the economic dependence exceeds 80% and 7% in other cases; and
- Members of corporate bodies: 11% paid by directors and managers and 9,3% in the remaining situations and 20,3 or 23,75 paid by the company.

Some benefits are excluded from contributions, such as:

- Allowances up to the limits established for PIT purposes;
- The compensation for termination of the employment contract in case of collective dismissal; and
- Possible subsidies for medical care and medicine for workers 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 that carry out an economic activity or who, by carrying out a single taxable transaction, fulfil the assumptions of actual incidence of PIT or CIT 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, operations assimilated to exports and international transport; and
- Transfers of goods intended to be placed in customs and fiscal warehouses and while the goods are under a suspensive regime.

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

- The purchaser is established in Portugal, in case the purchaser being 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 that is established or living out of the country).

23%

VAT General Rate

13%

VAT Intermediate Rate

6%

VAT Reduced Rate

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 Azores, the general VAT rate is 18%. The intermediate rate is 9% and the reduced rate is 4%. In Madeira, the VAT rates are 22%, 12% and 5%, respectively.

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

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 as 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 the higher.

The acquisition of more than 75% of the share capital of a quota company or a closed-end real estate investment fund which owns real estate assets located in Portugal is also subject to IMT.

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 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 6%;
- Urban buildings used as secondary residence: between 1% and 6%;
- 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 tax havens: 7,5%.

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

IMI is paid in a single instalment in April when the amount is equal to or less than EUR. 100, in two instalments paid in April and in November when the tax amount is over EUR. 100 and equal to or less than EUR. 500 or three instalments paid in April, July and November when the tax amount exceeds EUR. 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 which have been allocated for touristic use. The exemption for personal use buildings only applies if the building's taxable value does not exceed EUR. 125,000, and the owner's taxable income in the year prior to the acquisition is less than EUR. 153,300. If these requirements are verified the exemption will apply for three years. The buildings integrated in 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 his/her household, according to the number of dependents he/she is responsible for. Thus, the deduction can range between EUR. 20 and EUR. 70.

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 EUR. 600,000 for natural persons (EUR. 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 of real estate: 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

According to the «Global Competitiveness Report 2019» published by the World Economic Forum (WEF), Portuguese employment legislation is significantly less rigid than that of several other European countries, although it remains more rigid than the benchmark countries.

There is, however, a marked disparity between workers with recent employment contracts and employees with older contracts. As an example, the Portuguese legislation reduced the compensation due for collective dismissal for new workers hired after 2011, that ranges from 30 to 12 days of basic and daily pay for each year of seniority. For employment contracts concluded before 2011 the compensation is always 30 days per 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 Labour Code of 2009, since its entry into force, has been subject to several changes, that adopted labour standards that are more favourable to the employer, particularly in the context of the work organisation. Thus, working hours can now be changed relatively flexibly by the employer without increasing labour costs. Also, in this sense, the current Labour Code allows the employer to unilaterally change the workplace (geographical mobility), as well as the functions exercised by the worker (functional mobility).

According to data from the European Trade Union Institute, calculated as an annual average between the years 2010 to 2016, the number of workdays lost in labour disputes per 1,000 employees was only 15, less than that which is verified in the average of the other European countries.

According to the most recent data published by Pordata, the statistical database of socioeconomic matters, in 2018 an average of 51 days of work were lost due to labour conflicts.

In 2018, according to data published by PORDATA, the average weekly working hours in Portugal reached 35,9 with Portugal ranked 11th in the OECD ranking. Compared with other European countries, Germany reached an annual weekly average of 26,7 hours and the United Kingdom of 27,5 hours.

Education in Portugal is also a factor that has been showing a notorious evolution. In the «Global Competitiveness Report 2019» index on higher education, Portugal now has 5.1 points (on a scale of 1 to 7 points), in line with most European countries. According to PORDATA A total of 372,247 students were enrolled in higher education schools and universities in 2019.

45.5 pts.

Portugal's mark on WEF's employment rigidity index.

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 and absences and termination of contracts are the most important matters to be agreed 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. Only for some specific types of contracts the law requires a written document, 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 on 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 above must be provided in writing by the employer and delivered to the employee within 60 days following the effective date of the employment contract, unless it was specified in the contract.

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 2020, the minimum monthly wage in Portugal is EUR. 635. 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 the 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 remuneration payable until 15 December of each year; and a holiday bonus equal to one-month remuneration payable before the holiday period.

**40 hours**

Regular working time for Portuguese employees.

**22 days**

Paid vacation period.

**13 days**

Public holidays per year.

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 half or full day of rest (in all or in certain weeks of the year) may be also 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.** Contracts that are in force for a pre-established period set according to 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 for more than three times and have a maximum duration of two years and are only allowed under specific legal requirements.
- **Unfixed-term contracts.** Contracts that 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.** Contracts with temporary work agencies which hire the employee to subsequently second him/her 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 periods, during which either party may unilaterally terminate the contract without prior notice and without cause, are allowed.

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;
- For fixed and unfixed-term contracts: (i) 30 days for contracts with a duration equal or higher than six months and (ii) 15 days for contracts with a duration of less than six months.

In case of termination of the employment contract during the probation period, employees are not entitled to any compensation unless otherwise is 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, if it is not 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.

## 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 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 5 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 a parental leave for a child's birth, which may be shared between both parents after the birth of the child. In case of share of the parental leave, the parents are entitled to a total of 120 or 150 consecutive days, which are paid by the Social Security, as follows:

- For 120 days off: 100% of the employee's reference pay; and
- For 150 days off: 80% of the employee's reference pay. In cases of multiple births, the leave period will be increased by 30 days for each born child after the first child.

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

In case of share of 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.

If the leave is taken exclusively by one of the parents, the mother or father can choose to enjoy either 120 or 150 consecutive days, which are also paid by the Social Security, as follows:

- For 120 days off: 100% of the employee's reference pay; and
- For 150 days off: 80% of the employee's reference pay.

Notwithstanding the rules above, female employees are always entitled to: (i) an initial exclusive parental leave of 30 days, which can be enjoyed before the child's birth, and (ii) six weeks of leave after the child's birth, which may not be waived by the employee.

The father must take mandatory parental leave of 20 working days (consecutive or not) within six weeks after the birth of the child, five of which must be taken consecutively immediately after the birth. Fathers are also entitled to an additional and optional period of five business days (consecutive days or not), provided that this leave period is enjoyed at the same time of the mother's leave period.

## 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 year 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.

### 120-150 days

Full and partly paid parental leave enjoyed by both parents.

### 20 days

Parental leave requirement for fathers

## 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 worker, which must be sent:

- In fixed-term contracts, 15 or eight days before the contract expires, if the contract has been renewed or not, 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 his or her 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 he/she 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 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 work force 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 on the demand of goods or services);
- Organization-related and economic reasons (*e.g.* the existence of economic and/or financial operational deficits, (ii) changes to the activity or (iii) 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 5 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 a severance compensation.

## Dismissal due to Extinction of the Job Post

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 seniority in the position;
- Lower seniority in the professional group;
- Lower ranking professional group; and
- Lower seniority in the company.

The dismissal due to 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;
- The employee and the work council may challenge the grounds within 10 business days;
- Within three business days as 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 the compliance with the statutory requirements; and
- Within five days as of the period to challenge the dismissal, the employer may issue a final decision of termination of the employment agreement.

Upon termination of the employment, the employee is entitled to receive the outstanding credits and a 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; and
- Risk to the health and safety of the employee, other employees or third parties.

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 in to 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 his/her 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;
- Conduct causing serious damages to the company;
- 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 his/her view, constitute a breach of the employee’s duties. The proceedings are conducted by a senior person at the company, usually at 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 10 days to submit his/her defence and respond to the accusations and request probationary actions (*e.g.* to inquire witnesses) he/she 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 by any of the mentioned conditions must comply with the required legal formalities, otherwise it will have no effect.

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 EUR. 11,600);
- 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 (the New Rules).

If the compensation calculated for the period until 31 October 2012 is equal 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 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 entered before 1 November 2011, severance pay is calculated as follows:

- Until 31 October 2012: three or two days of base salary and seniority allowance per each month of employment, if the term of the employment is lesser or higher than six months, respectively;
- After 31 October 2012 and until 30 September 2013: 20 days of monthly base salary and seniority 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 EUR. 12,700);

- After 1 October 2013: the compensation amounts set out in the New Rules.

The minimum compensation is three monthly base salaries and 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) grants the employee, without any costs to the employer, the right to receive unemployment benefits from the Social Security.

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 work force (for companies with up to 250 employees) and no more of 62 employees if the company has more than 250 employees.

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

# 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*), that 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 Copyright and Related Rights 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 his/her 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 *Inspecção-Geral das Atividades Culturais* 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 holders 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).

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

Databases are protected as copyright when they are considered intellectual creations as defined in Law 122/2000 of July 4, that implemented Directive 96/9/EC on the legal protection of databases. When a database is not protected by copyrights, its owner benefits from a 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.

## Software

To be protected, computer programs cannot be copied from other computer program(s). 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 his/her/its work, including the right to permanent or temporary software reproduction by any means and in any form, the power to modify it in any way or make copies for commercial distribution.

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

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

A person that has the right to use a copy of software can use the program for various purposes, such as creating a back-up copy in connection with such use or study and test the program functioning.

**70 years**

Duration of copyright after  
the author's death.

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 a software, give him/her the right of mentioning 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 to 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

## 20 years

Duration of patents.

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 models rights last six years from the application date. The protection period can be extended for a maximum of 10 years.

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 possible to apply online for patent and utility model registration 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.

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 distinctive character and be represented in a way that third parties can determine clearly and precisely 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.

A 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 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 his/her consent, the owner's rights are considered expired. The trademark holder cannot disallow its use on the products. Furthermore, the trademark has to be actually used for five consecutive years, otherwise the registration expires.

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

Well-known and prestigious trademarks have 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 Portuguese well-known trademark, but also if it is applied to identical or similar products or services that might be mistaken for a well-known trademark.

A trademark application will be refused if it is identical or similar to another previous well-known trademark in Portugal or in the European Union, when it takes an unfair advantage of the distinctive

character or prestige of another trademark or if it could jeopardize that trademark, even if associated with different products or services.

## Trade secrets

Any confidential business information that provides 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 his/her/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 employees' rightful access to the information in accordance with accepted practices or the law. It is also legal to study, disassembly 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 to produce, offer, place on the market, import, export or store the product of such secret.**

When unfair competition, abuse of right 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.

# Real estate

## Overview

€3,205 sqm

Average house prices in  
Lisbon.

€5,000 sqm

Estimated average house  
prices per square meter in  
the best areas of Lisbon.

€10,000 sqm

Estimated average house  
prices in premium areas.

In general, property and property-like interests (the so-called rights *in rem*) which are 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 10.3% in 2019. The average price of housing in Portugal by the end of 2019 was EUR. 1,054 per square metre. After experiencing significant house price falls from 2011 to 2014, Portugal's house prices are now above the previous peak in 2009-10. The housing market began to recover in Q4 2014, after several consecutive quarters of price declines.

In the Lisbon metropolitan area, house prices averaged EUR. 3,205 per square metre in the third quarter of 2019. Prices for apartments in the centre of Lisbon are generally above EUR. 4,000 per square metre. In the prime areas of Lisbon, Chiado, Principe Real and Avenida da Liberdade and in Cascais prices may reach as much as EUR. 10,000 per square metre.

Despite the steep increase of real estate prices in the last years, Lisbon housing prices remain among the lowest of European capitals.

## Property rights

The most important forms of property interests in Portugal are:

- **Freehold** (*direito de propriedade*). Freehold gives the owner the rights 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 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 his fraction of the property including 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, transferable or not; 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. 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*) 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.

## 30 years

Maximum duration of commercial leases.

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 for more than three years have a legal right of preferred acquisition in case of sale to a third party. 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 the terms and conditions of the lease, it is common for agreements to be set out in standard contracts not subject to negotiation.

## Acquisition of property

### Promissory agreement of sale and purchase

The process for buying a property usually 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 or 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](http://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, does not need to be registered at the Commercial Registry Office and is not subject to IMT.

## Real estate investment funds and companies

The incorporation of collective investment entities in Portugal is subject to the rules established in Law no. 16/2015, of February 24<sup>th</sup>, 2015, which constitutes the Collective Investment Entities Act.

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

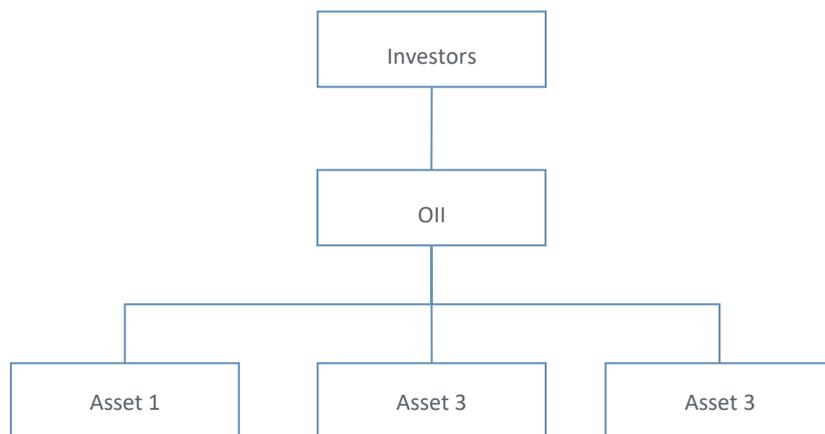
FIIs may be open-ended, closed-ended or even mixed entities depending on whether the participation units issued are variable or fixed. These entities may acquire any property rights over immovable assets for leasing, reselling or any other economic purpose and any shareholdings in real estate companies,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

The incorporation of FIIs and OIIs must be authorised by CMVM.

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

- **Types of companies.** OIIs may be SICAFI or SICAVI, depending on whether their share capital is fixed or variable. SICAFI are subject to the rules of closed FII and SICAVI to the rules of open FII.
- **Management.** If not self-governed, OIIs must be managed by fund managing companies. If the management is not entrusted to a fund managing company, OIIs will have to comply with the fund managing companies and FII minimum capitalisation requirements described above.
- **Share capital.** OIIs must be incorporated with a minimum share capital of EUR. 50,000 or EUR. 300,000 depending on the management type. The share capital of OIIs must be represented by nominative shares.
- **Minimum net assets.** OIIs must hold a minimum of EUR. 5 million of net assets.
- **Office.** OIIs authorised by CMVM must have their head offices in Portugal, be managed from Portugal.

The following diagram describes a multiple asset purchase scheme using a real estate investment company.



## Real estate investment trusts

The Portuguese Real Estate Investment Trusts (REIT) have been established as a new type of property investment companies named «*Sociedades de Investimento e Gestão Imobiliária*» (SIGI).

SIGIs are established and regulated by Decree-Law no. 19/2019, of 28 January, which entered into force on 1 February 2019. SIGI are also governed by the rules applicable to quota companies of the Portuguese Commercial Companies Code (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 EUR. 5,000,000. Furthermore, they must have their registered office and their 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 based 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, to the obligation of distributing dividends as a percentage of their profits and to comply with a maximum indebtedness cap.

The assets of a SIGI must be primarily composed by 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 CSC.

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

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

## It is possible, upon 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 no. 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.

**28%**  
Tax rate for income distributed by SIGIs.

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

SIGIs benefit from the rules applicable to all real estate investment companies. For the purposes of CIT, their asset-generated income, their real state capital gains and capital income and their dividends are not taxed.

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

Companies with residence in Portugal which receive income from SIGI are subject to a tax rate of 25%.

Non-resident investors, including private individuals or companies, without a permanent establishment in Portugal are subject to a 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 (EUR.)	Rates	Deduction
Up to 92,407.00	0%	0.00
From 92,407.00 to 126,403.00	2%	(0,537.9)
From 126,403.00 to 172,348.00	5%	(1,727.4)
From 172,348.00 to 287,213.00	7%	(3,836.1)
From 287,213.00 to 574,323.00	8%	-
Above 574.323,00	6% (single rate)	

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

Value (EUR.)	Rates	Deduction
Up to 92,407.00	1%	0.00
From 92,407.00 to 126,403.00	2%	(924.07)
From 126,403.00 to 172,348.00	5%	(4,716.16)
From 172,348.00 to 287.213,00	7%	(8,163.12)
From 287,213.00 to 550,836.00	8%	(11,035.25)
Above 550.836,00	6 % (single rate)	

Typically, real estate transactions are exempt from VAT. Notwithstanding, under certain conditions, the seller or the lessor may opt to renounce to 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 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 is no consumption of water, electricity, gas and telecommunications for a period of one year.

FIIIs benefit from a special tax regime set out in the Tax Benefits Statute.

# Dispute resolution

## Overview

The Portuguese judicial system is divided in two jurisdictions: the civil jurisdiction and the administrative jurisdiction. In both, courts are divided in three tiers.

The constitutionality of laws is judged by the Constitutional Court, which has the power to judge the conformity of laws or the interpretation of norms contained therein with the Constitution of the Portuguese Republic.

Using arbitration as a means of settling disputes is allowed under Portuguese law in civil and commercial matters as well as in tax matters, provided that the dispute does not belong to the exclusive jurisdiction of the courts and is a right in rem.

## Civil courts

The Supreme Court of Justice is the higher court of the civil jurisdiction and has national jurisdiction. The Supreme Court of Justice decides on appeals from lower courts. The Supreme Court is also organised in specialised sections.

The Courts of Appeal (*Tribunal da Relação*) are competent in several districts. These courts decide on appeals of the lower courts' decisions regarding any cases falling within the civil jurisdiction.

The courts of first instance decide on civil, commercial and labour actions.

There are 23 first instance courts (*tribunais de primeira instância*), which are divided in civil courts, criminal courts, labour courts and commercial courts, according to the subject and in central or local sections according to the value.

Reference should also be made to the existence of courts with extensive territorial jurisdiction that have specialised jurisdiction and know of specific subjects: (i) Courts Enforcement services (officers); (ii) the Maritime Court, based in Lisbon; (iii) the Intellectual Property Court, headquartered in Lisbon; (iv) Competition, Regulation and Supervision Tribunal, with headquarters in Santarém; and (v) the Central Criminal Court, headquartered in Lisbon, and (vi) Justices of Peace, extrajudicial courts that adopt a simplified procedure for the rapid resolution of disputes.

Justices of Peace decide on non-personal matters whose value does not exceed EUR. 15,000.

4

Courts of Appeal.

23

Courts of First Instance.

## Tax and administrative courts

The Circle Administrative Courts and the Tax Courts decide on disputes against public authorities involving public authorities' decisions and on acts involving tax matters.

The bodies of the administrative and tax jurisdiction are: (i) the Supreme Administrative Court; (ii) the Central Administrative Courts; and (iii) the Circle Administrative Courts and the Tax Courts.

The Supreme Administrative Court, the higher court for public law and tax matters, is divided in two sections: the administrative section and the tax section.

The Central Administrative Courts are the second instance courts for the administrative jurisdiction. The South-Central Administrative Court is located in Lisbon and the North Central Administrative Court in Oporto.

These Courts decide on the appeals of decisions made by Circle Administrative Courts and by Tax Courts.

The Circle Administrative Courts and Tax Courts decide, in the first instance, on the proceedings of administrative and tax jurisdiction that deal with administrative matters.

## 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 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 his claim against the defendant.

After being served with a plaintiff's claim, the defendant has 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 an attempt of settlement between the parties. 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 depositions 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 of the subject matter. Decisions in actions on the status of persons 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 the decision of the Court of Appeal that confirms the decision of the Court of First Instance.

## Court fees

Claim costs include the judicial fees, the winning party costs and other costs incurred during the proceeding, such as experts' fees.

The Constitution of the Portuguese Republic guarantees access to the courts to all citizens, but this does not mean that the judicial services are free of charge, only that the cost to pay is not so high that it considerably hinders the access to justice. This does not mean, however, that the procedural costs correspond or cover the actual costs of the proceedings.

Judicial costs must be paid for each court action, the amount of which depends on the value of the case.

The court fees must be paid at the beginning of the lawsuit. However, if the case value exceeds EUR. 275.000 an additional payment may be required at the end.

Court fees depend on the value of the action, for example:

- For a court action worth EUR. 50,000: EUR. 242;
- For a court action worth EUR. 100,000: EUR. 2,754;
- For a court action worth EUR. 250,000: EUR. 4,284;

The party costs are the legal expenses incurred by the winning party and will be borne by the losing party if the winning party so requests. The amounts are subject to a justifying note discriminating each one of them, which must contain all the essential elements relating to the case and the parties.

The estimated party costs for the losing party would be, *e.g.*:

- In a court action worth EUR. 50,000: EUR. 1,428;
- In a court action worth EUR. 100,000: EUR. 1,836;
- In a court action worth EUR. 250,000: EUR. 2,856.

Typically, the cost of appeals is about 50% of the cost of a first instance claim. In total the cost of an action plus appeals up to the Supreme Court would cost approximately 3.6% of the claim value for claims worth above EUR. 250,000. If the decision is overturned the appealed decision costs revert to the losing party.

The World Bank's «Doing Business 2018» Report estimates that Portuguese court costs correspond to 17.2% of the claim worth of approximately EUR. 40,000, including court fees, winning party costs and own costs. For higher value claims, the total cost is much lower than this estimate.

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