



WHYPORTUGAL 2019

# 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 trade marks
- 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

With the surge of tourism and real estate investment peaking in 2018, investors continue to seek opportunities in real estate, tourism, agriculture, wine production and manufacturing. The volume in international investment in Portugal continues to grow in 2019.

Still there are challenges ahead, as domestic and European economic growth slows down and political tensions in Europe and in the world have the potential to bring down investors' interest for Portugal.

Portugal's investment conditions remain stable. Portugal offers an easy process for setting up new businesses, reduced the time for obtaining administrative permits and improved its labour legislation.

The World Bank's «[Doing Business 2018](#)» report ranks Portugal in 13<sup>th</sup> place most attractive location to do business in the EU, ahead of many southern and eastern European countries competing with Portugal for international investment, and 34<sup>th</sup> place in the world's 190 economies.

According to a study published in the [European Central Bank's Bulletin](#), Portugal is one of the three countries in Europe with less restrictions to foreign direct investment. Portugal has "virtually" no restrictions on inbound foreign investment.

For international investors looking for a place to invest in Europe, Portugal offers several advantages. Portugal is an ideal location for nearshoring industrial and services facilities because of its access to Europe's 500 million consumers' market. Portugal also offers access to the Portuguese-speaking countries in four continents: Europe, America, Africa and Asia. The country has good road infrastructures and telecommunications networks and has three deep-water ports.

Portugal has a proven track record of successful foreign investments across a wide range of sectors. Investors that are considering Portugal as a place to invest. Volkswagen's Portuguese auto-plant, Autoeuropa, is one of the auto group's most productive plants. Many other international investors have plants, shared services centres and other business facilities in Portugal, such as Nokia Siemens Networks, Microsoft, Colt, Ikea, BNP Paribas etc.

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

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.

Main district capitals  
Oporto, Coimbra,  
Aveiro and Leiria

Portugal's total population is approximately 10 million people. Most of Portugal's population live in the mainland with less than 5% living in the Azores and in Madeira.

Portugal has an 800-year history with its European borders established for over 500 years. This gives Portugal a homogeneous population, sharing similar values, despite the regional differences. Moving within the country is common, especially from the inland rural areas to more populated coastal areas and cities.

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

Emigration to other European countries and America was common, especially in the fifties, sixties and seventies of last century, mainly to Germany, France and Switzerland but also to the United States and Canada.

In more recent years, depending on economic cycles, we have seen many Portuguese move to outside of Portugal; this time with better working skills. Portugal is also a country of destination for many foreign retirees, investors or people wishing to embark on new business ventures.

10.4  
million  
Population

Portuguese belongs to a group of languages called «Roman» that evolved from Latin.

Portuguese is today the sixth language of the world, spoken by about 230 million people in Portugal, Brazil, Angola, Cape Verde, Mozambique, Guinea Bissau, São Tomé and Príncipe and Timor.

€20,650  
GDP per capita

English is spoken widely in Lisbon, Porto, Algarve and in other main tourist destinations. Although most Portuguese nationals do not speak Spanish, most people can understand it. French is less spoken in Portugal than it used to be before it was replaced by English 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 support of the parliament which has the power to overthrow it.

The cabinet of ministers led by a Prime Minister holds the executive power. António Costa, leader of the Socialist Party, is presently the Prime Minister.

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. The current President of the Republic is Marcelo Rebelo de Sousa, elected in January 2016.

Bills of law require the signature of the President of the Republic, who promulgates laws and decree-laws approved by the Parliament and the Government respectively. The President may veto and send laws to the Constitutional Court for review their constitutionality.

The constitutionality of the laws and decree-laws enacted by the Parliament and the Government may also be submitted to the Constitutional Court by 1/5 of the members of the parliament. The Constitutional Court's decisions are binding on all courts and public authorities.

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

The current Secretary General of the United Nations, António Guterres, and President of the Eurogroup, Mário Centeno, are 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 «€». 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 a Securities Code 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 widely accepted in Portugal.

# Investment incentives

## Overview

Portugal offers national and foreign investors investment incentives to promote and attract new investments.

Incentives may take the forms of 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 2014-2020;
- 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.

Portugal has 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 entered into a partnership for the period from 2014 to 2020, named «Portugal 2020», under which the EU pledged an allocation of approximately 25,000 million euros of structural funds to Portugal.

The Portugal 2020 programme is composed of 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 foster 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](#), which enables an easier and faster process. Balcão 2020 also contains the applicable laws and regulations, support guides 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 physical and financial realisation, as well as to achieve the expected and contracted results. The achievement of the targets to which the beneficiary is committed is subject to audits and follow-up.

## 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 follow-up of an application and execution of investment projects that are or are intended to be the object of incentives.

In order 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 above:

- Internal Research and Development (R&D) activity of at least 10% of the company's turnover;

## €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.

- Strong component of applied innovation, translated into a significant part of its patent-anchored activity developed by the applicant;
- Clear environmental interest;
- Strong export vocation, with a minimum of 50% of its turnover directed to international markets; or
- Relevant production of tradable goods and services.

For the operationalisation of this system the government created an investment support commission (*Comissão Permanente de Apoio ao Investidor, CPAI*).

The project sponsor 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 from the date of receipt of the application.

Projects recognised as PIN are assigned a process manager, responsible for monitoring the administrative procedures and liaising with public authorities.

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 of the administrative authorities responsible for issuing the necessary licenses;
- Single period for public consultation for the relevant administrative procedures;
- Simplification of the procedures related to the planning and zoning instruments relevant for the project;
- Tacit positive opinions and tacit deferral under the various applicable procedures; and
- Simplification of procedures for obtaining construction permits.

## Tax investment code

The investment projects that have the legally envisaged activities, of which we highlight the following: (i) extractive and manufacturing industry activities, (ii) tourism, (iii) agricultural and forestry activities, (iv) defence, environment and energy, and (v) research activities may, until December 31, 2020, enjoy tax benefits, for a period of up to ten years from the completion of the investment project, provided that the amount invested is equal to or greater than three million euros.

The tax benefits to be granted may include:

- Tax credits;
- Reduction or exemption of real estate taxes, such as IMI (*Imposto Municipal sobre Imóveis*), during the term of the agreement, in relation to the buildings used by the project sponsor for developing the project; and
- Exemption from stamp duty, in respect of 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 area of the Municipality.

Projects which prove to be technically, economically and financially viable, provide for the creation or maintenance of jobs and which fulfil at least one of the following conditions may be granted access to the contractual fiscal benefits of productive investment:

- Be relevant to the strategic development of the national economy;
- Be relevant for reducing regional asymmetries; and
- Contribute to technological innovation and national scientific research, improve the country's environmental conditions or enhance competitiveness and productivity.

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

The investment incentives may be cancelled for:

- Failure to comply with the objectives and obligations established in the contract, for reasons attributable to the project sponsor;
- Failure to comply with tax and tax obligations by the project sponsor; or
- Provision of false information about the situation of the project sponsor or data tampering provided in the presentation, appraisal and monitoring of projects.

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

Tax incentives may be granted for business research and development, which allows CIT taxpayers residing in Portugal engaged in agricultural, industrial, commercial and services activities and non-residents with a permanent establishment in that 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 aforementioned tax deductions, investors must meet the following conditions cumulatively:

- The taxable profit is not determined by indirect methods; and
- The applicant cannot have any unpaid State and Social Security taxes or contributions.

Investment incentives can take one of three forms:

- By contract between the State and the investor, designated by contractual incentives;
- By autonomous incentives, depending on specific situations that are intended to protect; or
- By assignment under State funded programs.

# Residence permits

## European Union citizens

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

When they intend to live in Portugal for a period exceeding three months, he/she must request a registration certificate from the municipal council of their Portuguese area of residence, within 30 days after the first three months of stay in Portugal, in order to formalize the right of residence in Portugal.

After five consecutive years of obtaining the Certificate of Registration, their holders may request a permanent residence certificate which will be issued by the Foreigners and Borders Service.

## Citizens of non-EU countries

To enter Portuguese territory, citizens of non-EU countries must have a valid visa for the purpose of the displacement, and a valid travel document and they cannot be subject to any alert issued in the Integrated Service Information System of Foreigners and Borders Service (SEF) or in the Schengen Information System.

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

- Exercise a professional activity under an employment contract;
- Exercise an independent professional activity or for entrepreneurial emigrants;
- Exercise of teaching activity, highly qualified or cultural;
- Research, study, exchange of students of higher education, students of secondary education, internship and volunteering; and
- Family reunification.

Foreign citizens who do not have sufficient means of subsistence, either for the period of their stay or for the trip to the country in which their admission is guaranteed, are not allowed to enter in Portugal, or who are not in a position to acquire such means legally.

## Golden visa

The Residence Permit for Investment Activity, commonly named «golden visa», is a quick solution for investors from third countries wishing to obtain a residence permit.

This scheme allows the granting of 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 for residence permits, golden visas require holders to comply with their obligation to invest in Portugal, in particular by:

- Transfer a minimum amount of €1,000,000;
- Creation of a minimum of ten jobs;
- Acquisition of real estate with a minimum value of €500,000;
- Acquisition and renovation of buildings with more than 30 years or located in an area of urban renovation and completion of the renovation works, in an aggregate amount of at least €350,000;
- Cash transfer of €350,000 for research activities carried out in public or private scientific research institutions, integrated in the national scientific and technological system;
- Cash transfer of €250,000 to be used for investing or supporting artistic productions or the recovery of national cultural heritage;
- Cash transfer of €350,000 for the acquisition of shares in investment funds or venture capital funds for the capitalisation of companies; and
- Cash transfer of €350,000 for investment in the formation of a company or equity contribution to an existing company and the creation of at least five jobs.

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 may 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 establishment in Portugal.

**€350.000**

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

## How to obtain a golden visa

To obtain a Golden Visa the applicant must:

- Be physically present in Portugal, have or rent a residence in Portugal and have sufficient means to support themselves;
- Register with the Portuguese Social Security Authorities if the performed business activity in Portugal is subject to registration;
- Not have been convicted of criminal offences, punishable by imprisonment equal or over one year or with the entry ban in Portugal;
- Not have been flagged in the Schengen Information System and in the Portuguese authorities' information system for the purposes of refusing entry in Portugal;
- Hold a valid Schengen visa; and
- Apply for the legalisation of the stay in Portugal within 90 days from the date of first entry into 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 presented in person.

The administrative cost of the residence permit is approximately €5,600. If all requirements are fulfilled, authorisation will be granted within 60 days 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 right of permanent residence, which extends to their family members, after five years of holding a temporary residence permit in Portugal granted by the golden visa.

# Starting a business

## Investment vehicles

Investors who wish to establish an economic activity in Portugal may do so through corporate or contractual structures.

The most common forms of organisation are the branches and companies for cases in which the investor intends to develop its activity directly or through cooperation agreements with other companies, which may be done through a joint venture agreement, 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, it is sufficient to register the corporate resolution of the parent-company approving the creation of the branch. 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 is empowered 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 used for larger or long-term investments.

The capital of joint stock companies is divided into shares (*ações*) with a minimum value of €0.01, while the capital of quota companies is, as a rule, divided into as many shares (*quotas*) as the number of shareholders, representing the part of each of them 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 €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 Companies' Registrar Office (*Registo Nacional de Pessoas Coletivas*, RNPC), the shares of joint stock companies are designed to ensure that they can be freely transferable privately or in stock exchanges and do not need to be registered with the Companies' Registrar Office.

However, the differences between the two have become blurred, as it is now mandatory that the company or the bank where the shares are deposited keep a record identifying the shareholders and the number of shares that they own. In both types of companies, the transfer may 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 €1,500,000;
- The turnover exceeds €3,000,000 euros; 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 20,000,000 euros;
  - (ii) The turnover exceeds 40,000,000 euros;
  - (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 200,000 euros a Board of Directors must be appointed.

The board of directors is responsible managing the company's business and can resolve on 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, including their remuneration;
- 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» (*empresa na hora*) 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 €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 2019*

## 9.3 days

OECD High Income Average

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The founders may submit the application online, choosing a pre-approved name and the articles from one of the previously approved. In the same act, the founder must provide the necessary elements electronically 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 online application must be submitted by the founder no later than 24 hours after beginning the application. 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 €180 if the articles of association are one of the pre-approved form and €380 if the articles of association have been proposed by the founder.

## Traditional method of incorporation

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

- Requesting the company's name certificate with the Companies' Registrar Office (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 by way of a public or private deed;
- For joint stock companies, depositing the minimum initial share capital in a bank;
- Registering with the Commercial Registry Office;
- Publishing the articles of association and the list of the 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 a 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); and
- Submitting annual financial statements to the banking regulatory authority (*Banco de Portugal*) for statistical purposes.

This single statement has to 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 whereby 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 parties to the unincorporated joint venture act separately, binding themselves only to act in a coordinated way in pursuit of 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 enjoy 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 responsible, jointly and severally 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 whereby 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 through that Assembly and a manager or managers with powers of representation, as well as others 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 revenue for the state is obtained 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% for income in excess of 1.5 million euros also apply.

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 may 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 administered by the Tax and Customs Authority (*Autoridade Tributária e Aduaneira*), responsible for the management of taxes in accordance with 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 as consideration for 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).

It is considered that there is a permanent establishment in Portugal when a foreign company carries on its activity in Portugal through a permanent representation as well as if a person acts on behalf of the company in Portugal and has the power to broker and conclude contracts in the name of the company.

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

In the case of a small or medium-sized enterprise, the rate to be applied to the first €15,000 of the taxable income is 17% in the continent, 16% in the Madeira archipelago and 13.6% in the Azores archipelago.

In general, business costs and expenses are tax deductible to the extent 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 upon the filing of their annual income tax returns, which must be submitted until 30 June 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 €150,000 in the previous year.

Most municipalities apply the maximum rate of 1.5%, such as Lisbon, Loures, Setúbal, Porto, 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 nominal corporate income tax rate.

Up to 1.5%

municipal surcharge.

## State surtax

On the part of the taxable profit over €1,500,000, there is also the state surtax, which is calculated according to the following rates:

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

## Autonomous taxation

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

- Undocumented expenses: 50%;
- 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 they obtain income that is considered to be obtained in Portugal and that 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.

Payment of dividends to companies established in another State-Member of the European Union which hold a shareholding representing at least 10% of the share capital of the company established in Portugal during a minimum uninterrupted 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 resident in another Member State of the European Union, provided that 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;

- The company is, directly or indirectly, owned in more than 25% by resident companies or persons, unless if the shareholder is resident in a EU Member State, a EEA country or a country that entered into a double taxation agreement with Portugal and the stake fulfils some of the participation exemption requirements (e.g. a minimum stake of 10% and a minimum holding period of one year); or
- More than 50% of the target company's assets are composed by real estate property 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: income from dependent work;
- 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 €80,000 are applied the following additional solidarity charges:

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

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

Business and professional income is determined on the basis of accounting. When the amount of income does not exceed €200,000, taxpayers may choose to apply the simplified regime under which taxable income is determined by the application of coefficients.

To the determined amount of IRS can be deducted, with certain limits, health expenses, expenses with education and training, household expenses and real estate expenses.

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).

Referring to capital and property income, withholding tax may apply. 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 proceeds of the sale are reinvested (after deducting the repayment amount of any loan for acquisition) in the acquisition of another permanent residence in Portugal between the 24 previous months 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 and to the extent such taxation is permitted 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 or 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 right to receive such right will be renewed in any of the following years, within the referred period of ten years, 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, in particular, 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, the 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% 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.

23%

VAT general rate.

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.

13%

VAT intermediate rate.

Transfers of goods which are in Portugal at the moment of commencement of carriage to the purchaser or, if there is no carriage, that are in Portuguese territory at the time 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.

6%

VAT reduced rate.

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;
- 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 where the acquirer is a private individual resident in Portugal).

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, excise duties may also be applied to taxpayers to the extent that they 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 time of entry for 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 calculated on the basis of 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 general 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. IMI must be paid by the owner, usufructuary or surface right holder of the building, 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 €100, in two instalments paid in April and in November when the tax amount is over €100 and equal to or less than €500 or three instalments paid in April, July and November when the tax amount exceeds €500.

There are situations where exemptions or reductions might apply, such as urban buildings for personal and permanent residence, buildings of taxable persons with dependents and urban buildings which have been allocated for touristic use. The exemption for personal use buildings only applies if the building's taxable value does not exceed €125,000, and the owner's taxable income in the year prior to the acquisition is less than €153,300. If these requirements are verified the exemption will apply for three years. The buildings integrated 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 household, according to the number of dependents he is responsible for. Thus, the deduction can range between €20 and €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 €600,000 for natural persons (€1,200,000 for couples) and (ii) 0.4% of the value of the property for companies.

## Stamp duty

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

- Onerous acquisition of real estate: 0.8%;
- Donations 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 own housing.

# Employment law

## Overview

According to the «Global Competitiveness Report 2018/2019» 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, it should be noted that the Portuguese legislation reduced the compensation due for collective dismissal that was not attributable to the employee from 30 to 12 days of basic and daily pay, creating a more favourable regime for employment contracts concluded before 2011. 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 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 the year 2016 an average of only 12 days of work were lost due to labour conflicts. This number is significantly lower than in several European countries, such as Spain, which lost 21.2 days in the same year.

In 2016, according to data published by the OECD, the average annual working hours in Portugal reached 1842, with Portugal ranked 14th in the OECD ranking. Compared with other European countries, Germany reached an annual average of 1363 hours and the United Kingdom of 1676 hours.

Education in Portugal is also a factor that has been showing a notorious evolution. A total of 372 753 students are enrolled in higher education in 2018, according to data published by PORDATA.

45.5 pts.

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

In the «Global Competitiveness Report 2018/2019» index on higher education, Portugal now has 5.1 points (on a scale of 1 to 7 points), in line with most European countries.

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 duration of contract, 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 in writing. 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 they are specified in the contract.

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

The minimum monthly wage in Portugal since 1 January 2019 is €600. 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.

**40 hours**

Regular working time for Portuguese employees.

**22 days**

Paid vacation period.

**13 days**

Public holidays per year.

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.

The maximum regular working period is of 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 commonly 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. It is the more commonly used contract which has no limitations or specific requirements
- **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 three 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 six 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 which require special qualifications, and for employees in positions that involve a higher degree of trust and confidence 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 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, provided that 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 have to 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 some cases, absences entail 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 child's birth. In case of share of the parental leave, the parents are entitled to a total of 150 or 180 consecutive days, which are paid by the Social Security, as follows:

- For 150 days off: 100% of the employee's reference pay; and
- For 180 days off: 83% 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.

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, by way of a joint written statement, up to seven days after the child's birth.

If the leave is enjoyed 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.

Male employees are entitled to ten business days (consecutive days or not) within the thirty days after the child's birth, of which five days must be enjoyed after the child's birth. Fathers are also entitled to an additional and optional period of ten 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 one 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.

### 150-180 days

Full and partly paid parental leave shared by both parents.

### 120-150 days

Full and partly paid parental leave enjoyed by a single parent.

### 30 days

Mother's pre-birth leave.



## 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. In particular, 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.

## Termination by the employee

The employee can, by just cause, terminate the contract of employment, with the right to compensation.

Also, 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 it is less than two years old, 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 follow the following steps:

- Serving of an initial notice of dismissal to the work council, if any, or to each of the employees;
- Appointment of an employee committee by the employees within 5 business days after initial notice is served (optional);
- Consultation meeting between the employer and the relevant employees (or the employees' committee, if any) with the purpose of reaching of 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
- Serving of a notice, in writing, to each employee of 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 compensation.

## Redundancy

In case the number of employees involved does not allow a collective dismissal, termination on the ground of redundancy could be an alternative. However, the redundancy 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 has the same redundant position, 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 on the ground of redundancy 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 the compensation.

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

## 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, in particular for not being able to adapt to technical changes to the detriment of the employer.

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

- Continued reduction of productivity or work quality; and
- Risk to the health and safety of the employee, other employees or third parties.

Dismissal for ineptitude is seldom used by employers as its requirements are difficult to prove.

Upon termination of the employment agreement, the employee will be entitled to compensation, which calculation will depend on the date of admission.

## Dismissal due to a breach of contract attributable to the employee

In case of violation of legal or contractual duties by the employee, the employer may, following a disciplinary process, dismiss him/her for “just cause” 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 its 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 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 has to 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. Dismissed employees are entitled to severance compensation except when they are dismissed with “just cause”.

## Severance compensation

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

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 €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 into 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 €11,600);
- 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 to 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 redundancy 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 trademark that identifies the company in the market is an important asset which must be preserved. Inventions, utility models, computer programs, and others, are often the basis of the company's business and important for the companies that use them to develop their activity.

The law recognizes and protects intellectual creations in two categories: (i) industrial property rights (*propriedade industrial*), which cover utility patents, designs and trademarks and (ii) copyright (*direitos de autor*), which protects 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 comply with the requirements imposed by European directives and guarantee the same protection level as the majority of the 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 works of architecture and engineering.

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. Moral rights may not be assigned and cannot be transferred, even if the author authorizes its exploitation. Moral rights cannot be waived and do not lapse with the passing of time.

The economic exploitation of rights can be assigned or licensed by the author or the copyright owner.

Copyright does not require an official registration. Protection is automatic and it is acquired by the mere creation of the work. Although, it is possible and sometimes advisable to register at Inspeção-Geral das Atividades Culturais to prove the authorship of the work.

In addition to the protection given by national laws, international treaties and conventions (such as the Berne Convention) extend the protection of copyright beyond Portuguese borders.

Copyright holders may delegate the right to manage the work to a collecting society, such as the Portuguese Society of Authors (*Sociedade Portuguesa de Autores*) and the Portuguese Association of Software Producers, ASSOFT.

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

Databases are protected as copyright when they are deemed an intellectual creation as defined in Law 122/2000 of 4 July, which implemented Directive 96/9/EC on the legal protection of databases. When a database is not protected by copyright, its owner still benefits from special protection when there has been a substantial investment in obtaining, verifying or presenting the contents of the database. 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 must be original. Software receives the same legal protection as literary works. This means that the owner of software has the powers inherent to the economic exploitation of the work, including the right to permanent or temporary reproduction of software by any means and in any form, the power to make changes and any other modifications to it and make copies thereof 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. In addition, the copyright owner may register the program at the literary property register.

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

70 years

Duration of copyright after  
the author's death.



The person having a right to use a copy of software may, without the authorisation of the owner, use the program for various purposes, such as providing a back-up copy in connection with such use or observe, studying or testing the functioning of the program.

The licensee or another person with the right to use the program or acting on behalf of a person authorised to do so, may decompile the necessary 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 may be considered a violation of the Software Protection Law and punishable as a criminal offence under the Cybercrime Law.

Personal rights, which belong to the author of a software, allow the right to mention the software's name and the right to claim the authorship thereof.

## Patents and utility models

Patents ensure the exclusive use and the right to prevent others from manufacturing, offering or storing an invention which has an industrial use, without the owner's consent, even if inventions apply 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 has to represent a novelty, be capable of industrial application and must not be obvious to a person with average knowledge in the relevant technical field.

The object is no longer patentable when it concerns discoveries, scientific theories and mathematical methods, materials or substances existing in nature, nuclear materials, aesthetic creations; schemes, rules and methods for performing mental acts, playing games or doing business, and information presentations.

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

The duration of a patent is 20 years after the date of application. The validity may be shorter 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 patent protection for an additional five years.

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

**20 years**

Duration of patents.

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

International patents are awarded by the World Intellectual Property Organisation and ensure protection 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 but 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. Rights over utility models last six years from the date of application. The period of protection can be extended as long as it does not exceed 10 years.

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

It is possible to apply online for patent and utility model registration at <https://inpi.justica.gov.pt/>.

## Designs

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

To be protected designs do not need to be entirely new but at least they must include a novelty combination or layout of known elements with a distinctive character.

Rights over registered designs last for five years since the date of application and may be renewed for successive equal periods up to a maximum of 25 years. When registered, any design is protected by copyright since the date of its creation.

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

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

World Intellectual Property Organisation's international registration allows the recognition of intellectual property rights in 65 countries. The applicant must have a business, or be a national or domiciled, in a country that is part of the System. However, it is the national laws that govern the registration in each country.

## Trademarks

Trademarks are signs used in trade to identify products and services. Trademarks grant their holders a 10-year exclusive right, renewable, partially or fully, in equal periods, to a sign or set of signs that can be represented graphically, words, names of persons, drawings, letters, numbers and sounds, the form of the product or respective packaging, that distinguish the products and services. Trademarks may also consist of advertising slogans for products or services.

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

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

A trademark protection on the EU may 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 a business, be a national or domiciled, in a member country of the Madrid System (International Trademark Registration Treaty). However, it is the national laws that 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 placed on the European Economic Area by the owner, or with his consent, the owner's rights are considered exhausted. The trademark holder cannot disallow its use on the products. Furthermore, the trademark needs a serious use 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 may 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 known in Portugal or in European Union, even if related to different products or services, when it takes an unfair advantage of the distinctive character or prestige of another trademark or can damage that trademark.

## 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 competitor's trade secrets, without its consent, is not legal 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, at the time of obtaining, using or disclosing the trade secret, 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, **observation**, study, disassembly or testing of a product or object that has been made available to the public or when such access conforms with honest commercial practices.

Whenever there is a breach or well-founded fear that others may cause serious and difficult to repair 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 breach of a trade secret, the court decision may order the offender to stop or refrain from using or disclosing the trade secret and prohibit the offender to produce, offer, place on

the market or use any infringing goods, or to import, export or store infringing goods.

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

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 by way of a public deed executed before a notary.

€2,171 sqm

Average house prices in Lisbon. 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.

€5,000 sqm

Estimated average house prices per square meter in the best areas of Lisbon. According to the national statistical office (*Instituto Português de Estatística*, INE), house prices increased 10.4% in 2017. The average price of housing in Portugal by the end of 2017 was €1,111 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 2018, nationwide house prices were already 3.6% above their previous peak seen in Q2 2010.

€10,000 sqm

Estimated average house prices in premium areas. In the Lisbon metropolitan area, house prices averaged €2,171 per square metre in January 2018. Prices for apartments in the centre of Lisbon are generally above €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 €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*). Properties may be owned by more than one person, where each owns a proportional and intangible share of the property. Each co-owner may

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 may 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.

30 years

Maximum duration of

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.

commercial leases.

The maximum term of commercial leases is thirty years. There is no statutory term and the parties may 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 on a monthly basis, 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.

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 generally 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 which 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 by way of 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 the transfer of 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 a collective investment entities in Portugal is subject to the rules established in Law no. 16/2015, of February 24<sup>th</sup>, 2015, which establishes the Collective Investment Entities Act.

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

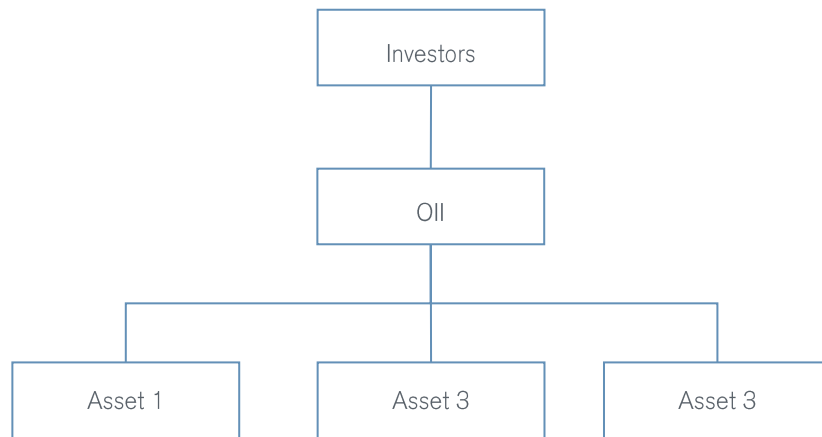
FIs may be open-ended, closed-ended or even mixed entities depending on whether the participation units issued are variable or fixed. These entities may acquire any property rights over immovable assets for leasing, resale or any other economic purpose and any shareholdings in real estate companies,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

The incorporation of FIs and OIs must be authorised by CMVM.

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

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

In order to be qualified as SIGI, a company must be incorporated as a joint stock company (*sociedade anónima*) with a minimum subscribed and fully paid up share capital of €5,000,000. Furthermore, they must have their registered office and their effective management in Portugal.

SIGIs also have to 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 also collective investment undertakings (with dividend rules similar to a SIGI).

SIGIs may 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 of property ownership rights, surface rights or other similar rights over properties for leasing or for 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 have to 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 within three years from the date of 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.

In order 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%

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

Tax rate for income distributed by SIGIs.

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)	

In general, real estate transactions are exempt from VAT. Notwithstanding, under certain conditions, the seller or the lessor may opt to renounce to such exemption in order 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, 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.

Flls 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 the laws or the interpretation of the norms contained therein with the Constitution of the Portuguese Republic.

Using arbitration as a means of settling disputes is permitted 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.

4

courts of appeal.

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 courts of first instance (*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.

23

courts of first instance.

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 €15,000.

## 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 a sum of money (in any currency), grant injunctions against the parties, order the performance of a contract obligation, 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 from 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 for all citizens, but this does not imply 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 €275,000 an additional payment may be required at the end.

Court fees depend on the value of the action, without any limit, for example:

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

The party costs are the legal expenses incurred by the winning party and will be borne by the counterparty if the winning party so requests. The amounts are subject to a discriminatory and justifying note, 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 €50,000: €1,428;
- In a court action worth €100,000: €1,836;
- In a court action worth €250,000: €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 €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 €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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