



Fall | 22



INTERNATIONAL LAWYERS NETWORK



MGRA & ASSOCIADOS LAW FIRM
Buying and Selling Real Estate in Portugal

ILN REAL ESTATE GROUP



KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER PORTUGUESE LAW

I. INTRODUCTION

Portugal is an Iberian Peninsula country, bordered by the Atlantic to the west and south and Spain to the north and east. In addition to its continental landmass, it also comprises the archipelagos of the Azores and Madeira. Portugal has around 10.3 million inhabitants.

Portuguese territory is split up into three administrative divisions: the first division includes 18 administrative country districts, while the others include the autonomous regions of the Azores and Madeira. All country districts are sub-divided into 308 municipal districts and approximately 3,100 parishes.

Lisbon is the capital of Portugal and its largest city with approximately 545,000 inhabitants and head of a metropolitan area of 18 municipalities with 2.5 million inhabitants. Portugal's second and third largest cities are Sintra, in Lisbon metropolitan area and Vila Nova de Gaia, in the Oporto metropolitan area, with approximately 385,000 and 303,000 inhabitants, respectively.

Portugal is a democracy. Its sovereign bodies are the President of the Republic, Assembly of the Republic, Government and the Courts. The current President of the Republic (and head of state), re-elected in 2021 for a five-year term, is Marcelo Rebelo de Sousa. Elections for the 230 deputies of the Assembly of the Republic are held every four years and are followed by the appointment of the Prime Minister (the head of government, currently António Costa), who then forms the government (currently a government with an absolute majority, elected in January of 2022 will run to 2026).

Portugal has been a member of the European Union since January 1st, 1986, and a founding member of NATO on April 4th, 1949. It has been a member of the United Nations since the 14th of December 1955.

II. REASONS TO INVEST IN PORTUGAL

Renowned for its pleasant weather and safety environment, Portugal has an extensive Atlantic coast, a wide system of motorways, excellent infrastructures for living and leisure time, including prime health facilities, competitive operating costs, proactive pensions, an advantageous tax system for investors and flexibility in human resource management systems. These singularities have made Portugal a privileged place to invest, to do business and to live.



III. OVERVIEW OF THE NATIONAL REAL ESTATE MARKET

The main characteristics of the Portuguese real estate market are:

Transparency, with various international consultants regulated by the most demanding professional organizations of the commercial real estate sector.

Vitality were quality of supply in all sectors pars with main European markets, dynamic demand and a considerable presence of foreign occupiers.

Diversity, with a strong international contingent of developers and investors performing and looking for new opportunities in the Portuguese market

III.1. REAL ESTATE INVESTMENT MARKET

The road for real estate investment funds in Portugal was opened in 1985. Since launching up until the 1990s, these funds had typically



been used as SPVs rather than as an actively managed, pooled, closed-end-fund. Portuguese market, up to 1998, was relatively small and not particularly professional, with few and distanced foreign investments.

With the perspective of elimination of foreign exchange risk to most of other European markets, in 1998, ahead of the Euro's launch, investment increased from around €180 million to more than €400 million, around 90% of which was foreign.

Joining the Euro in 1999, highlighted the country on the radar of international investors. Almost all asset transactions in this early years were in the office or shopping center sectors, with retail property accounting for more than 60% of the capital involved.

Portugal saw a steady grow in real estate investment during the last decade:

- In 2008 and 2009, real estate investment was relatively low, mostly due to restrictions and scarcity of bank funding for the sector.
- A slight recovery was noticed in 2010 with a total investment volume of €690 million.
- The two following years continued to reflect the sector investment tendencies. 2011 saw a total investment value of €167 million, while 2012 reached the lowest level of the century, recording only a total investment of € 108 million.
- 2013 marked the growth of the market activity, closing a total of €322 million investment in commercial real estate assets, tripling the previous year volume, followed by a significant growth also in 2014.
- In 2015, numbers largely surpassed the investment of latter years, including the

historical high of 2007, with a €1.9 billion registered in commercial real estate assets transactions, doubling the volume of the previous year. Significantly 90% of the invested capital came from outside the country.

- During the year of 2016, the value of real estate transactions stabilized around € 1.3 billion) and then reached a new historical high in 2017, with € 2 billion invested in real estate.
- In 2018, a new historical high was registered, with investments over € 3.5 billion. During this period, the volume of the number of transactions also increased exponentially ;
- Despite the decline in the number of transactions from 2019 to 2020, related to the worldwide pandemic caused by the Covid-19 disease, the number of properties transacted only decreased by 19.7%. On the other hand, the average value of the properties transacted in 2020 increased slightly (+0.5%) when compared to 2019;
- In 2021, the increase in the value and number of housing transactions, reached a new record in the available series, as evident in the figures below. Therefore, the increase represents a new maximum in the series available and a growth of 20.5% when compared to 2020. During the year of 2021, the value of housing transactions amounted to €28.1 billion, 31.1% more than in 2020.



Source: INE, Índice de Preços da Habitação

Number of real estate purchases of the last seven years.

III.2. FOREIGN INVESTMENT IN REAL ESTATE

The entry to the EU in the 1986 slowed the Portuguese economy volatility and brought the country to the spotlight of international companies, in a first instance infrastructure development and then urban planning and inner cities requalification. In these early years real estate investment was little significant, mainly lead to housing, or second housing and UK investors were almost the only presence in the market – specially the south (sun and beach market).

The boost of foreign investors in the Portuguese real estate market was felt since the country joined the Euro in 1999.

Several billion euros of foreign capital have been invested mostly by Germans, British, Dutch and Americans on the acquisition of several real properties since then. Recently, investors from China, Russia, Brazil and France have also made a significant impact in Portuguese market. This value could have been higher as the Portuguese market was, on occasions, simply not large enough to supply enough products in terms of number, quality and/or scale, to fully meet the demand.

Portugal remained present in the investment intentions of several of the most important European investment houses over the past 15 years, with buyers interested in effectively diversifying risk and achieving slightly higher income returns than those available from other markets, in a country offering security, transparency and less competition.

Dramatic changes impacting European economic situation, in particular Portugal, drove away the attention of foreign institutional investors until 2013. However, the second half of 2015 brought back international investment into Portugal and, more particularly the last quarter of the year, showed signs of what may be considered an upturn of real estate investment activity. The successful outcome of the political crisis, the continued improvement of economic indicators, greater public debt market stability and Portugal's good performance, made important contributions to the market recovery.

It should be noted that in Portugal, in July 2022, the median bank appraisal value (€/m²) was set at 1,417, and the implicit interest rate on housing credit contracts was set at 0.912.

IV. HOW TO MAKE A REAL ESTATE INVESTMENT

Portugal, lined with other continental legal systems such as France (propriété), Germany (Voll Eigentum) and England (freehold), adopting the concept of “full ownership” which is defined by the full and exclusive rights of use, fruition, and disposal of the property.

IV.1. INDIVIDUAL (DIRECT ACQUISITION)

The formalization of a real estate acquisition requires the compliance of some important steps, as follows:



IV.1.1. INVESTIGATION

Investigating the property intended to be acquired by checking its commercial, legal, tax, environmental and urban status it's essential for a clean and structured execution of the sale and purchase agreement.



Usually, it is done by commissioning due diligence procedures, which should ensure and guarantee that the property in question belongs to the seller, is duly licensed, is not subject to any encumbrance, costs, or limitations (registered with the respective Land Registry Office), or that any impediments have been extinguished before or after the sale.

If the intention is to acquire a plot of land, the buyer should also verify, with the competent entities, the urban planning in all its different forms, as well as any restrictions and licenses.

On the other hand, when acquiring a building, or building unit, the use permit license which defines the purpose of the property, must also be verified.

IV.1.2. SALE AND PURCHASE PROMISSORY AGREEMENT

Before the formalization of the real estate sale, it is common practice to celebrate a promissory agreement (or pre-contract agreement) as an immediate binding document, in which case the signing of the definitive sale agreement is usually

conditional upon the parties' compliance with several obligations.

The parties can also agree with a deposit and down payment of the property price. In the case of default by the promissory seller, the promissory purchaser may receive twice the amount paid; if the default is caused by the promissory purchaser, the promissory seller can keep the amounts he has already received.

IV.1.3. SALE AND PURCHASE AGREEMENT

The real estate sale is formalized either in a deed, signed before a notary, or by a certified private document, which can be signed in the presence of a lawyer.

Altogether with the deed, or certified private document, there is the Land Registry Office record, which is one of the main instruments of a real estate deal, destined to make public the property's actual legal status.

Due to the principle of the priority of registration, the first registered right is effective before third parties and prevails over their incompatible rights even if those rights have been established before the date of registration.

Accordingly, together with the sale and purchase agreement, the registry of the property acquisition is vital to assure the protection of the purchaser before third parties.

IV.1.4. REAL ESTATE WARRANTY

According to Portuguese Law, the real estate seller (and the property builder, when applicable) is responsible for any defects or flaws in the property for a ten-year period upon delivery, regarding non-conformities concerning structural construction elements, and, for a five-year period upon delivery, regarding all other non-conformities.



Lack of conformity is presumed to exist at the time of delivery, except when this is incompatible with the nature of the property or with the characteristics of the lack of conformity.

Purchaser must report the defect or flaw to the real estate seller or property builder within one year from the date of detection of the defect (always within the warranty periods referred to above). Problems that arise during this period cannot be deemed as result of bad use by the purchaser.

Warranties with distinct deadlines may be stipulated between the parties and expressly stated in the sale and purchase agreement.

This legal warranty can also be refused by both parties, specifically if they agree to sell the property “as it is” at the moment of the sale.

IV.2. SPECIAL PURPOSE VEHICLE (INDIRECT ACQUISITION)

The second form of real estate investment is the indirect acquisition of property, via a special purpose vehicle, previously incorporated, or acquired, for such purpose. This procedure requires the compliance of some steps, as follows:

IV.2.1. DUE DILIGENCE

Also, in this case commissioning a due diligence procedure by the purchaser is recommended, in order to i.) verify the property legal status, as detailed above, and to ii.) analyze the investment vehicle’s commercial, financial, tax, corporate and legal status, ensuring the legal acquisition of equity stakes as well as that no undesired obligations or rights are dragged along with the entity to be used as vehicle.

IV.2.2. SHARE DEAL

This process involves the acquisition of equity stakes in investment vehicles, such as commercial companies (usually joint-stock and limited liability companies) and undertakings for collective investment of a contractual nature or of a corporate nature.

IV.2.3. SALES GUARANTEES

In special purpose vehicles acquisitions, it is common practice for the seller to accept liability for a specific length of time for any infringement of its representations and warranties on the object of the sale and underlying assets.

V. TYPES OF SPECIAL PURPOSE VEHICLES

It is standard practice in Portugal to make real estate investments through one of these three vehicles which, in other words, represent the process of a special purpose vehicle acquisition deal: (i) commercial companies, (ii) real estate investment funds and, (iii) real estate investment companies.

V.1. COMMERCIAL COMPANIES

Joint-stock companies as well as limited liability companies are on the Portuguese frontline, representing most of the existing national commercial entities.

V.1.1. LIMITED LIABILITY COMPANIES BY SHARES (PLC)

In a PLC, share capital is divided up into shares, with a minimum initial amount of €50.000,00, and must, only at the moment of its incorporation, have a minimum of five shareholders, unless it is incorporated by another company as its sole shareholder. Also, only two founding shareholders are required when the State, or a State holding company, owns more than 50% of the capital stock.



After the incorporation, restrictions to the minimum number of shareholders no longer apply.

In its most common composition, the company is governed by a General Meeting Board, the Board of Directors and the Sole Supervisor, who should be a Statutory Auditor. PLCs with a maximum registered share capital of EUR 200.000,00 may be managed by a Sole Director (“administrador único”), by means of a provision of the bylaws, rather than having a Board of Directors.

In most PLC companies, the share transfer agreements require no special formalities, and its necessary registration is executed directly and internally at the company itself.

V.1.2. LIMITED LIABILITY COMPANIES BY QUOTAS (LTD)

Usually representing the small and medium sized companies, the LTD companies are the most found type of companies in Portugal due to the inexistence of a minimal initial share capital requirement and a simpler functioning and structure, as well as the bigger control given to the founder partners.

Its share capital is divided up into quotas, with a minimum initial amount *per* quota of €1. The limited liability company can have or be incorporated by a sole quota holder (in which case the company must bear the corporate expression “sole quota holder limited liability company by quotas” – “SPUQ”), or by any other number of quota holders (“SPQ”).

Differently from PLC companies, the information about the quota holders’ identity is public, accessible through the commercial registry official records.

The quota transfer requires writing form and an official registry of the transmission.

V.2. REAL ESTATE INVESTMENT FUNDS

Over the last few years, these vehicles took up the Portuguese market, mostly due to its favorable tax regime.

The so called “*Fundos de Investimento Imobiliário*” (“FII”) are autonomous assets under the joint ownership of individuals or corporate entities, usually called “unit-holders.” FII’s are also divided up into identical investment/participation units.

Portuguese FII’s assume one of the following forms:

- i) Open-ended funds – with a variable number of investment units according to the market demand;
- ii) Close-ended funds – with a fixed number of investment units, established at the moment of its emission. Increasing or reducing its number is only possible if and when mentioned in the law and in the management regulation ;
- iii) Mixed funds – Comprising a category of fixed number of investment units and another of variable number, .

FII’s are a type of undertaking for collective investment (“OIC”) of a contractual nature, which management and representation must be performed by third entity specialized in the real estate market – as a general rule, by a management company of a collective investment undertaking (“SGOIC”). The management company of a real estate investment fund must be a public limited company and have its head office and effective management in Portugal.

The creation of these entities requires a formal process, which includes authorization and official supervision from the Securities



Commission (“*Comissão do Mercado de Valores Mobiliários*” or “*CMVM*”).

The assets of a FII may comprise liquidity, real estate property and shareholdings in real estate companies, including units in other real estate companies.

V.3. REAL ESTATE INVESTMENT COMPANIES

In 2010, Portugal included in its legislation a possibility that already existed in most of European countries, which consisted in forming FII's with a corporate form (aside of the contractual form previously mentioned).

The so-called “*Sociedade de Investimento Coletivo*” are collective investment entities (“*OIC*”) with legal personality, which shall take the form of a public limited liability company of variable capital (“*SICAVI*”) or fixed capital (“*SICAFI*”).

These collective investment companies can be self-managed or managed by management companies of collective investment undertakings (“*SGOIC*”).

The share capital of the collective investment companies (is divided into identical nominative shares with no nominal value and they shall have a minimum initial capital of 50,000€ (fifty thousand euros) or 300,000€ (three hundred thousand euros), depending on whether they are heterogeneous or self-managed.

In addition to the activities permitted for the type of collective investment undertaking in question, these companies also have the exclusive corporate purpose of conducting the following activities:

- Investment management, undertaking the acts and operations necessary for the proper implementation of the investment policy;
- Management of the collective investment undertaking;

- Marketing the units of the collective investment undertakings under management.

Both SICAVI AND SICAFI are subject to the General Framework of Collective Investment Undertakings (“*Regime Geral dos Organismos de Investimento Coletivo*”) and, except when it is incompatible with the specific nature and object of these companies or with the provisions of this General Framework, by the provisions of the Portuguese Companies Code.

Additionally, it is important to point out that the rules behind the incorporation of FII's (contractual form) are equally applied to the incorporation of these collective investment companies, as well as the applicable Portuguese corporate legislation. Therefore, the creation of these entities also requires a formal process, which includes authorization and official supervision from the Securities Commission (“*Comissão do Mercado de Valores Mobiliários*” or “*CMVM*”).

V.4. INVESTMENT AND PROPERTY MANAGEMENT COMPANIES (SIGI)

Finally, on January 2019, a new type of investment and property management companies (“*SIGI*”) was legally established, aiming to (a) diversify companies' funding sources, (b) increase the investment in the economy and competitiveness of the securities market, (c) attract foreign investment, and (d) dynamize the Portuguese real estate market, especially the leasing market.

The SIGI corporate purposes are limited to:

- i) Acquire property rights or other equivalent rights on real estate, to subsequently rent them, including atypical forms of contract which include the supply of services necessary for the use of the real estate property;



- ii) Acquire and maintain shares of others SIGI or companies with their head office in Portuguese territory or in another Member State of the European Union or the European Economic Area which is bound to administrative cooperation in the area of taxation equivalent to that established within the European Union and which meet certain requirements;
- iii) Acquire and maintain participation units or shares in (i) real estate investment undertakings funds or (ii) residential rental real estate investment funds and residential rental real estate investment companies.

However, the property rights should constitute the major assets of these companies.

The “SIGI” are public limited companies (“PLC”) and must have a minimum share capital of €5.000.000 (five million euros), represented by ordinary shares. The shares are admitted to trading on a regulated market.

The “SIGI” must bear the business name “Sociedade de Investimento e Gestão Imobiliária, S. A.” or “SIGI, S. A.”, and may be formed with or without a call for public subscription. However, the deferment of any capital contributions is not permitted.

Debt limitations are applicable.

Furthermore, both public limited companies (“PLC”) and real estate investment undertakings (“OII”) in corporate form (“SICAVI” or “SICAFI”) may be converted into a “SIGI”, subject to compliance with certain requirements stipulated by law. In both cases a resolution of the general meeting is required, with the majorities provided for by law.

Finally, the following relevant aspects of the regime applicable to SIGI should be noted:

- i) Indebtedness of SIGI may not correspond, at any time, to more than 60% of the value of the total assets of the SIGI;
- ii) Shares representing the entire share capital of SIGI must, within one year from the registration of the company's incorporation, be admitted to trading on a regulated market or selected for trading on a multilateral trading facility located or operating in Portugal or in another Member State of the EU or European Economic Area;
- iii) Within nine months of the end of each financial year, SIGI companies must distribute, in the form of dividends, at least: (i) 90% of the profits of the financial year resulting from the payment of dividends and income from shares or units distributed certain entities; and (ii) 75% of the remaining profits of the financial year distributable under the terms of the Companies Code.



VI. TAX REGIME

The following information is general and describes only the main features related to real estate investment in Portugal, namely the rules applicable to general operations and legal entities, not covering, for example, complex and specific operations or entities whose qualification/legal nature is not provided for under Portuguese law, such as fiduciary structures or company’s groups.



VI.1. PROPERTY ACQUISITION

VI.1.1. REAL ESTATE TRANSFER TAX (“IMPOSTO MUNICIPAL SOBRE AS TRANSMISSÕES ONEROSAS DE IMÓVEIS”) AND STAMP DUTY (“IMPOSTO DO SELO”)

Acquisition of real estate is subject to two types of taxes, which must be paid by the purchaser to the tax authorities before the signing of the real estate acquisition agreement.

IMT – Real Estate Transfer Tax, which is calculated over the price of the real estate or its tax patrimonial value (“VPT”), if higher.

IMT tax rates for housing buildings are progressive on the value (brackets ranging from 0% to 7,5% for values over €1.010.000,00) and there are fixed rates for plots of land for construction or other urban buildings and assimilated (6.5%) and rural property (5%), or if the non-individual purchaser is resident, or is deemed as being held or controlled by an entity domiciled, at a *tax haven* as defined by Portuguese law (10%). Nevertheless, Portuguese law foresees some exceptions or deferrals on IMT payments, some of them applicable at the acquisition moment by using some of the special purpose acquisition vehicles identified above.

For instance, real estate companies benefit from an actual exemption as long as the property acquired is re-sold (i) within 3 years; (ii) its destiny is not changed; and (iii) without the purpose of being re-sold again. Upon the acquisition of property in the context of urban rehabilitation operations, some reliefs are available upon meeting certain conditions.

IS – Stamp Duty, calculated over the price, or the tax patrimonial value, if higher. IS tax rate is fixed, in most frequent situations at 0.8%.

VI.1.2. VAT (“IVA”)

Under Portuguese law, real estate acquisitions are exempted from VAT.

Upon sale and purchase or letting of properties, it is possible, if certain conditions are met, to waive the VAT exemption and subject the operations to VAT at the rate of 23% (22% in Madeira; 18% in the Azores). The exemption from VAT does not cover “office center” type contracts, which are subject to, and not exempt from, VAT under the general terms.

VI.2. PROPERTY OWNERSHIP

VI.2.1. PROPERTY TAX - “IMI”

Owners of real estate located in Portugal, which are registered as such as of 31 December of a certain year, are subject to IMI. Nowadays, IMI reaches a variable rate between 0.3% and 0.45% (depending on the municipality) for urban buildings and plots of land for construction, a fixed rate of 0.8% for rural property, and a fixed rate of 7.5% for owners’ resident in tax havens or deemed as being held or controlled by entities established therein.

IMI is levied on a yearly basis and becomes payable in the following year to which it refers, upon the issuance of the tax assessment by the tax authorities.

IMI must be paid: (i) in one installment, in the month of May, when its amount is equal to or less than € 100; (ii) in two instalments, in the months of May and November, when the amount is greater than € 100 and equal to or less than € 500; (iii) in three instalments, in the months of May, August and November, when the amount exceeds € 500.

VI.2.2. PROPERTY TAX - “AIMI”

Additional to the IMI (“AIMI”) is due by the owners of urban properties, located in



Portugal, intended for residential purposes and plots of land for construction.

The taxable basis corresponds to the sum of the VPT of all urban properties owned by each taxpayer, reported as of 1 January of the year concerned.

If the owner is an individual, an exclusion from taxation up to € 600,000 applies. Married or living in non-marital partnership taxpayers who opt to submit a joint tax return for AIMI purposes, have an exclusion from AIMI of € 1,200,000.

In case of individuals, the AIMI rates vary between 0,7% and 1,5% (progressive rates).

For corporate entities, the AIMI rate is of 0,4% (with no exclusions on the taxable basis).

The value of buildings owned by legal persons and used for the personal use of the holders of the respective capital, the members of corporate bodies or of any administrative, directing, managerial or supervisory bodies or of their spouses, ascendants and descendants, is subject to an aggravate rate of 0.7%, being subject to a marginal rate of 1% for the portion of the value exceeding € 1,000,000 and equal to or less than € 2,000,000, and to a marginal rate of 1.5% for the portion exceeding € 2,000,000.

AIMI is assessed by tax authorities in June of each year, being the respective payment made in September.

VI.2.3. SPECIAL CONTRIBUTIONS

Special Contributions are required when properties are intended to construction of new buildings and whenever the value of plots of land for construction increases significantly due to public works improving major infrastructures (mostly in Lisbon,

Porto and their outskirts). The applicable rate varies between 20% and 30% and is levied on the aforesaid increased value.

VI.2.3. TAX ON INCOME FROM PROPERTY OBTAINED IN PORTUGAL BY NON-RESIDENTS

Income from property obtained in Portugal by non-residents (e.g., rentals) is taxable at a special rate of 28% (applicable to individuals), or 25% (applicable to corporate entities), being in both cases subject to a 25% withholding tax.

VII. LEASING LEGAL FRAMEWORK

VII.1. GENERAL ISSUES

In Portugal, leasing is, day by day, acquiring a more relevant economic weight.

On 14 August 2012, a pack of Laws entered into force with the purpose of implementing structural reforms in the Portuguese legal framework of real estate lease to boost the market.

The real estate lease is divided into two types: (i) leases for non-housing purposes and (ii) leases for housing purposes.

VII.2. LEASES FOR NON-HOUSING PURPOSES

The most relevant aspect of lease agreements for non-housing purposes, usually for commercial or industrial purposes, is the free stipulation rule, allowing the parties, to agree on issues related to length, termination, and opposition to the renewal of lease contracts, with subsidiary application of the rules regarding leases for housing purposes. However, in the first five years after the beginning of the contract, regardless of the stipulated period, the landlord cannot oppose the renewal.

According to the law, the lease agreements may be entered into for fixed term or be of



non-specified duration. The last option is not commonly used in the property market in recent years. If no provision is made by the parties, the contract is deemed to be concluded for a fixed term, for a period of five years. If entered on a fixed-term basis, the duration may be freely agreed between the parties. The agreement can be automatically renewable, unless the parties agree or any of them decide otherwise and duly notifies the other.

Maintenance works are freely regulated between the parties. In this case, if no provision is made by the parties, the landlord is responsible for carrying out the conservation works and the tenant is deemed as being authorised to carry out the works required by law or by the purpose of the lease.

The costs and expenses related with the property are freely agreed between the parties, who are also free to agree the criteria for updating them.

Parties can subject the transmission of tenant's contractual position to landlord's permission, although, if nothing is stipulated, the transmission is possible in the most frequent situation of transfer of the commercial or industrial business carried out in the property ("*trespasse*").

Any party may cancel the lease agreement based on a serious breach of duty committed by the other. The legal framework specifies some of those situations that justify the termination of the lease agreement by the landlords, with a compensation for the tenants.

Additionally, the contract can be simply terminated by means of a written communication sent by the landlord to the tenant in situations of delay or lack of payment of the rent.

On all other serious breaches, the termination can be declared by the Court.

VII.3. LEASES FOR HOUSING PURPOSES

Lease agreements for housing purposes, unlike the lease agreements for non-housing purposes, have less contractual freedom. Some of the most relevant matters are imperatively established by law. That is the case of rules regarding the early termination and the opposition to lease renewal which were, nevertheless, softened in 2012, favoring and strengthening the landlord position.

These lease agreements may also be entered for a fixed term or be of non-specified duration. If no provision is made by the parties the contract is deemed to be entered for a fixed term of five years.

Regarding the fixed-term lease agreements, the minimum period for permanent habitation is 1 year. These agreements are necessarily renewable for 3 years, except when the parties stipulate a different period.

The landlord may legitimately terminate the contract grounded on the need to live in his own house, or the necessity of construction work or maintenance that will result in the disappearing of the house. Otherwise, the agreement will be suspended during the maintenance period, but the tenant has the right to be re-housed in an equivalent house. If the tenant lives in the house for more than 15 years, the agreement can only be terminated by demolition or severe works that do not allow remaining in the house.

The tenant is entitled to oppose to the renewal of the lease, by means of a prior notice, as well as to terminate the lease agreement at any time and without justification, provided that 1/3 of the lease duration has elapsed, by means of a written communication sent to the



landlord with a prior notice provided in the applicable law.

As to non-fixed term agreements, the law provides the conditions and the prior notices that the landlord and the tenant must comply in order to legally terminate the agreement.

Like in the non-housing lease agreements, any party may cancel the lease agreement based on a serious breach of duty. The legal system provides a non-exhaustive list of cases of breach justifying a landlord’s decision to terminate the lease agreement.

Additionally, the contract can be simply terminated by means of a written communication sent by the landlord to the tenant in eligible situations of delay or lack of payment of the rent.

In 2019 tax incentives were introduced, foreseeing a signification reduction of taxes in longer renting agreements.

Residential lease agreements may also be entered for non-permanent residence or for transitory purposes, such as, labour, education or touristic reasons and, in these cases, they have a specific regime.

VII.4. SPECIAL PROCEDURE FOR EVICTION

One of the ultimate goals of the urban lease regulation’s reform in 2012 consisted of speeding up the procedure for eviction. A special eviction regime was established to ensure the effectiveness of the termination of lease agreements – regardless of its purpose – applicable when the tenant has not vacated the leased property on the date foreseen in the law or agreed by the parties.

This eviction procedure is specially used when the lease agreement was terminated by non-judicial means. The landlord can cumulate the request for eviction with the claim of payment of rents and other expenses and charges due

by the tenant. This procedure takes place before an extrajudicial entity and is aimed to ensure fast procedures, although it can, under certain circumstances, be transferred to court, namely when the tenant opposes eviction.



VIII. URBAN REHABILITATION

To promote the properties’ rehabilitation, the new reforms simplified the urban licensing procedure required for these operations as well as for termination of lease agreements when the landlord desires to perform rehabilitation works on the property.

Urban rehabilitation of buildings must, however, meet energetic efficiency, seismic vulnerability and accessibility requirements subject project to approval by the municipality.

There is a special procedure applicable to the prior licensing control regarding buildings that were built at least 30 years ago and that show high levels of deterioration. According to this procedure a prior formal communication and a “visa” by the competent entity is requirement enough to allow the works to commence the execution of works, thus waiving the bureaucracy of a construction license. path.

In case the property is leased, and the landlord intends to carry out refurbishment works or deep restoration, in most situations, and as stated above, the landlord is entitled to terminate the lease agreement without having to resort to court and to obtain the release of the leased property, provided that he relocates



the tenant or, alternatively, awards the tenant with the legally foreseen compensation.

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