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# 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 10.4 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 547,000 inhabitants. Portugal's second and third largest cities are Sintra and Vila Nova de Gaia, 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 PS government with an absolute majority, elected in January of 2022).

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

### II. REASONS TO INVEST IN PORTUGAL

Portugal has a pleasant weather, an extensive Atlantic coast, a wide system of motorways, excellent infrastructures for living and for leisure time, 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 real estate market in Portugal is highly developed. It has a relatively high quality of supply in all sectors, on par with the main European markets, dynamic demand and a considerable presence of foreign occupiers. The market is highly transparent, with various international consultants regulated by the most demanding professional organizations of the commercial real estate sector. There is also a strong international contingent of developers and investors looking for new opportunities in the Portuguese market.

#### III.1. REAL ESTATE INVESTMENT MARKET

In 1985, the road for real estate investment funds in Portugal was opened. Since their launch and up until the 1990s, these funds had typically been used as SPVs rather than as an actively managed, pooled, closed-end-fund. The market in Portugal, up to 1998, was relatively small and



not particularly professional, with foreign investments being few and far between.

The elimination of foreign exchange risk with most of other European markets, when Portugal joined the Euro in 1999, placed the country more notably on the radar of international investors. Investment, in 1998, ahead of the Euro's launch, increased from around €180 million to more than €400 million, around 90% of which was foreign. Almost all asset transactions were in the office or shopping center sectors, with retail property accounting for more than 60% of the capital involved.

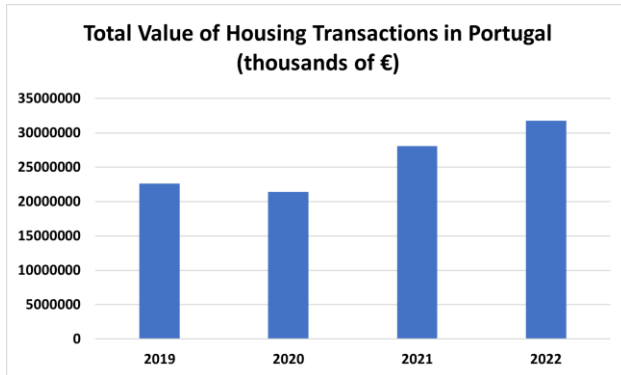
Portugal saw a steady grow in real estate investment during the last decade:

- In 2008 and 2009, the real estate investment was relatively low, mostly due to restrictions and scarcity of bank funding for the real estate 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.
- In 2013, the growth of the market activity began, and a total of €322 million in commercial real estate assets were closed, tripling the volume of the previous year, followed by a significant growth also in 2014.
- In 2015, numbers largely surpassed the investment of previous years, including a historical high of 2007, with a registered €1.9 billion of transactions in commercial real estate assets, doubling the volume

of the previous year. 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 over € 3.5 billion of investment. During this period, it was also evident a significant increase in the volume of the number of transactions;
- 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%) compared to 2019, from 112.5 thousand euros to 113.1 thousand euros;
- In 2021, the main indicators available highlight the increase in the value and number of housing transactions, reaching a new record in the available series, as evident in the figure below. Therefore, the increase represents a new maximum in the series available and a growth of 20.5% compared to 2020. During the year of 2021, the value of housing transactions amounted to €28.1 billion, 31.1% more than in 2020.
- In 2022, the value of housing transactions totaled 31.8 billion euros, corresponding to a growth of 13.1% compared to 2021.





Source: INE, *Índice de Preços da Habitação (Housing Price Index)*.

### **III.2. FOREIGN INVESTMENT IN REAL ESTATE**

The real estate investment market in Portugal came to notice by the foreign investors 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 recorded at the time.

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 on European economic situation and in particular on Portugal had driven 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 in terms of the adjustment program, made important contributions to the market recovery.

It should be noted that in Portugal, in July 2023, the median bank appraisal value for housing (€/m<sup>2</sup>) was set at 1,525 euros per square meter, and the implicit interest rate on all mortgage contracts was 3.649% in June, the highest since April 2009.

### **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*), adopted 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 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, if the intention is to acquire a building, or building unit, the buyer should also verify the use permit license which defines the purpose of the property.

#### **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.

The 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.

The 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). The problems that have arisen during this period cannot be the result of bad use by the purchaser.



There may be warranties with distinct deadlines when a conventional warranty is stipulated between the parties and is 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**

As in direct acquisition deals, in indirect acquisition deals it's also recommended the commission of a *due diligence* procedure by the purchaser, 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. PLC's 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 register is executed directly 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” – “SUPQ”), 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 of real estate investment 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.

The expression “investment fund” is reserved to the investment fund, with the addition of the expression “real estate” in the case of real estate investment funds, which should be part of its denomination.

FII’s must assume one of three capital variability forms:

- i) Open-ended funds – with a number of investment units, variable according to the market demand;
- ii) Close-ended funds – with a fixed number of investment units, established at the moment of its emission, with the possibility of increasing or reducing its number, if and when mentioned in the law and in the management regulation;
- iii) Mixed funds – with a fixed number of investment units and variable number, included in two different categories.

FII’s are a type of undertaking for collective investment (“OIC”) of a contractual nature, which management and representation must be performed by third ones 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 this type of collective investment undertaking, 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 Asset Management Regime ("*Regime da Gestão de Ativos*") - which has revoked the General Framework of Collective Investment Undertakings – and by the provisions of the

Portuguese Companies Code, except when it is incompatible with the specific nature and object of these companies or with the provisions of the Asset Management Regime.

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 main corporate purposes are 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 also 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) The indebtedness of SIGI may not correspond, at any time, to more than 60% of the value of the total assets of the SIGI;
- ii) The 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 by certain entities; and (ii) 75% of the remaining profits of the financial year distributable under the terms of the Portuguese Companies Code.



## VI. TAX REGIME

### 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”)

The 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 (which is uncommon).



IMT tax rates for housing buildings are progressive between 0% to 7.5% (for buildings whose acquisition price or VPT exceeds € 1,050,400) and fixed for rural property (5%) and plots of land for construction or other urban buildings (6.5%), or when the purchaser, not as an individual, has office, or is deemed as being held or controlled by an entity domiciled, at tax haven (10%). Nevertheless, Portuguese law foresees some exceptions or deferrals on IMT payments, some of them applicable when the acquisition is made by using some of the special purpose acquisition vehicles identified above.

Indeed, real estate companies benefit from an actual exemption as long as the property acquired is re-sold (i) within 3 years; (ii) in the same physical state in which it was acquired; (iii) without the purpose of being re-sold again. Upon the acquisition of property in the context of urban rehabilitation operations over buildings, an exemption is also available upon meeting certain conditions.

IS – Stamp Duty, calculated over the price, or the VPT, if higher. IS tax rate is fixed in 0,8% in most frequent situations.

#### **VI.1.2. VAT (“IVA”)**

Under Portuguese law, real estate acquisitions are generally exempted of VAT (exceptions apply).

### **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% 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.

Additional to this tax may be applicable if certain thresholds are exceeded.

#### **VI.2.2. PROPERTY TAX - “AIMI”**

Additional to the IMI (“AIMI”) is due, among others, 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 aggravated 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 expressly foreseen in law and are generally required when properties are destined to the construction of new buildings and whenever the value of plots of land for construction increases significantly due to major infrastructure public works carried out (mostly in Lisbon, Porto and their outskirts). The applicable rate varies between 20% and 30% and are 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., leases) 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.

Capital gains deriving from the transmission of Portuguese real estate by non-resident individuals are nowadays generally taxed on 50% of net capital gains (as determined by law) at the IRS general and progressive rates,

varying from 14,5% to 48% for annual incomes up to €78.834,00. Above that threshold an additional flat rate surcharge of 2,5% applies to global incomes of up to €250.000,00 and of 5% thereafter.

When obtained by companies such capital gains are to be taxed under the correspondent Corporate Income Tax applicable regime.

## **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, in compliance with the terms established in the memorandum of understanding executed by and between Portugal, the European Commission, the European Central Bank and the International Monetary Fund, 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 aspects of lease agreements for non-housing purposes, usually for commercial or industrial purposes, can be freely stipulated by the parties, who are, accordingly, free to agree on issues related to duration, 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.

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

The 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 in the law. That is the case of rules regarding the early termination and the opposition to renewal of the lease agreements.

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 otherwise.

The landlord may legitimately terminate the contract if he alleges the necessity 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 notice sent with a prior notice that may vary depending on the initial term or on the term of its renewal, 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 committed by the other. Also, here 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.

**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 in order 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.

**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.

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, the execution of works in such buildings does not require a construction license, usually a bureaucratic process, being that a prior formal communication to the competent entity is requirement enough to allow the works to commence.

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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