



Fall | 21



INTERNATIONAL LAWYERS NETWORK



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



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 510,000 inhabitants. Portugal's second and third largest cities are Vila Nova de Gaia and Porto, in the northern, with approximately 300,000 and 217,000 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, elected on October of 2019, supported by a multi-party left wing alliance).

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

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.

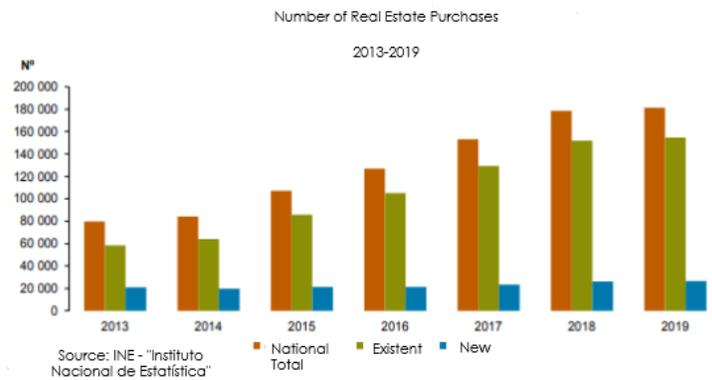


The elimination of foreign exchange risk with most of other European markets, when Portugal joined the Euro in 1999, placed the country more notably on the radar of international investors. Investment, in 1998, ahead of the Euro's launch, increased from around €180 million to more than €400 million, 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, as evident in the figure below:



Number of real estate purchases of the last six years.

- In 2020, even with the worldwide pandemic caused by the Covid-19 disease, the number of properties transacted only decreased by 19.7% compared to the previous year. 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.

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, 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.

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 that may occur in a five-

year period upon delivery. 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 five-year warranty period). 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.

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”), or by any other number of quota holders.

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 units.

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 of a contractual nature, which management and representation must be performed by third ones specialized in the real estate market.

FII’s can be managed by real estate investment fund management companies with effective registered office and activity in Portugal.

The creation of these entities requires a formal process, which includes authorization and official supervision from Bank of Portugal (“*Banco de Portugal*”) and of 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.

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 Imobiliário*” (“*SIIMO*”) are collective investment entities with legal personality, which may take the form of a public limited liability company of variable capital (“*SICAVI*”) or fixed capital (“*SICAFI*”) and whose property assets is owned by such entity.

A SIIMO can be self-managed or managed by professional real estate investment fund management companies (as FII with contractual form). The standard practice in Portugal is to choose an already existing investment fund management company.

Both SICAVI and SICAFI are subject to:

- i) The regulations on the previously mentioned open-ended and close-ended real estate investment funds (FII), respectively and,
- ii) The applicable regulations set out in the Portuguese corporate legislation.

SIIMO’s must have a minimum share capital of €375.000,00 divided into identical nominative shares with no nominal value.

Additionally, it is important to point out that the rules behind the incorporation of FII’s (contractual form) are equally applied to the SIIMO’s incorporation, as well as the applicable Portuguese corporate legislation.

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, for instance;
- ii) Acquire and maintain shares of others SIGI;
- iii) Acquire and maintain participation units or shares in real estate investment funds.

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

The SIGI are limited liability companies by shares (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, but the deferment of any capital contributions is not permitted.

Debt limitations are applicable.

VI. TAX REGIME

VI.1. PROPERTY ACQUISITION

VI.1.1. REAL ESTATE TRANSFER TAX ("IMPOSTO MUNICIPAL SOBRE AS TRANSMISSÕES ONEROSAS DE IMÓVEIS") AND STAMP TAX ("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, if higher (which is uncommon).

IMT tax rates for housing buildings are progressive between 0% to 8% and fixed for plots for construction or other urban buildings (6.5%) and rural property (5%), or when the purchaser, not as an individual, has office at tax haven (10%). Nevertheless, Portuguese law foresees some exceptions or postponements on IMT payments, some of them applicable when the acquisition is made by using some of the special purpose acquisition vehicles identified above.

IS – stamp tax, calculated over the price, or the tax patrimonial value, if higher. IS tax rate is fixed, in most frequent situations, in 0.8%, although this rate can increase to 1% on acquisitions of real estate valued at least at € 1.000.000,00, or when the purchaser, not as an individual, has office at tax haven (7.5%).



VI.1.2. VAT ("IVA")

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

VI.2. PROPERTY OWNERSHIP

VI.2.1. PROPERTY TAX - "IMI"

IMI is levied on a property's taxable value and is payable by the property owners on 31 December of each year. Nowadays, IMI reaches a variable rate between 0.3% and 0.45% for urban buildings and plots for construction, a fixed rate of 0.8% for rural property, and a fixed rate of 7.5% for owners' resident in tax havens.



VI.2.2. SPECIAL CONTRIBUTIONS

Special Contributions are 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 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., 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.

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 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 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, recent 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

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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.

