

# Legal 500 Country Comparative Guides 2024

## Portugal Real Estate

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in Portugal.

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# Portugal: Real Estate

## 1. Overview

The Portuguese real estate market has been in the last few years in the international spotlight for investment, due to the growth recorded in recent years. This growth is fundamentally due to the demand from large multinationals, residents, entrepreneurs, students, among others, making it one of the most sustainable and attractive real estate markets in Europe. The basis for this great demand includes the climate, a modern education system, a safe society, highly qualified labour force fluent in English, good infrastructures and, in general, an excellent quality of life. On the other hand, this high demand is also met by limited supply.

According to the National Statistics Institute, in the 2<sup>nd</sup> quarter of 2024, the median house price of dwelling sales in Portugal increased by 6.6%, in relation to the 2<sup>nd</sup> quarter of 2023, and 5.0% in relation to the 1<sup>st</sup> quarter of 2024.

Following the increase in interest rates beginning in the 3<sup>rd</sup> quarter of 2022, the European Central Bank has shifted monetary policy and interest rates are currently decreasing, which, combined with tax exemptions granted to first-time home purchasers, may lead to an increase of demand and a subsequent increase in real estate prices.

In brief, the Portuguese real estate market continues to present strong fundamentals and is proving to be an attractive market for investors.

## 2. What is the main legislation relating to real estate ownership?

The main legislation relating to real estate ownership in the Portuguese jurisdiction is: (i) The Constitution of the Portuguese Republic, which is the fundamental law in the Portuguese legal framework and classifies the right to private property as a fundamental right; (ii) The Portuguese Civil Code, which, in general terms, regulates the relationships between private parties, including specific parts on the lease agreements, property and other rights over assets; (iii) The Legal Framework of Urban Development and Construction ("RJUE") which provides for the legal regime applicable to the licensing of the constructions and infrastructure works; (iv) The General Regulation of Urban Construction ("RGEU") which

sets out the technical requirements applicable to the constructions; (v) Decree-Law no. 268/1994, October 25, which foresees the legal regime applicable to the horizontal property; (vi) Decree-Law no. 39/2008, July 7, which establishes the legal regime applicable to tourism undertakings; (vii) Decree-Law no. 128/2014, of August 29, which provides for the legal regime on the operation of local accommodation establishments; (viii) Law no. 6/2006, of February 27, which foresees the new regime of urban leases; (ix) Decree-Law no. 294/2009, of October 13, which establishes the new regime of rural leases; and (x) Decree-Law no. 84/2021, of October 18, which sets out the rights of consumers in the case of a lack of conformity of digital goods, content or services, and provides for certain subjective and objective requirements for assessing conformity.

## 3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2023 or are there any major anticipated new laws which are expected to materially impact them in the near future?

The *More Housing Program* ("Programa Mais Habitação") has entered into force (under Law no. 56/2023, of October 6), introducing a series of measures, translated in profound changes in several legal regimes that over the last few years have contributed significantly to attract investment in the real estate market, and which will be affected by the measures of this program, notably the following: (i) limitation until December 2029 of the value of rents in new lease agreements, subsequent to lease contracts entered into in the last five years; (ii) establishment of forced leases for vacant properties; (iii) revocation of the possibility of acquiring residence permits for investment activities ("Golden Visa") through real estate investments; (iv) ending of new registrations of local accommodation in areas of high urban pressure, namely, the metropolitan regions of Lisbon and Porto.

Following a change in government, some of these measures have been affected, such as the establishment of forced leases for vacant properties, which has been revoked by Decree-Law no. 43/2024, of July 2, and the restrictions on new registrations of local accommodation.

The regime on the operation of local accommodation

establishments, approved by the [Decree-Law n.º 128/2014, of August 29](#), was subject to several significant changes, such as: (i) in certain situations, municipalities can now create administrative regulations pertaining to the conditions by which new local accommodation registries can occur – they can now create 'areas of sustainable growth', limiting new registries or create 'areas of containment', imposing restrictions on the duration, rules and transmissibility of registries; (ii) the opposition to the usage of an autonomous unit as local accommodation now requires the majority of the permillage – as opposed to two thirds of the permillage – and it must be rooted in the fact that such practices disturb the ordinary usage of the building, causing inconveniences and affecting the right to rest of the owners; (iii) the registry as local accommodation no longer has an expiry date and ceases to be personal and non-transferable.

In addition, the More Housing Program has provided for several measures to simplify environmental and urban planning procedures, aiming to simplify several administrative procedures and promote the urban development with certain specific rules to increase the offer of public housing, low-cost construction and affordable renting houses.

Furthermore, in 2024, the Government enacted a new legal framework aiming to simplify the licensing procedures and to limit the discretionary powers of the municipalities in what regards the evaluation of projects and of the elements that should compose the administrative files to be presented in the Municipality. There are currently two main procedures related with construction projects:

- a. In the licensing procedure, the Municipality analyses the architecture project and its compliance with the applicable rules and regulations (notably, the planning instruments and the local / technical regulations). Subsequently to the evaluation of the Municipality and after the engineering projects are submitted and approved by the same entity, the project is licensed and a construction permit is issued, on request, after the local charges are duly paid (including the licensing charges and the infrastructure charges). Construction works may begin as soon as the licensing permit is issued. Licensing has been the main administrative procedure applied in the evaluation and approval of projects and construction works for the past decades.
- b. In the previous communication ("PC") procedure, the developer and its technical team verify all the elements that compose the architectural, the engineering projects and the compliance of the applicable rules and regulations. Subsequently to

such verification and to the payment of the local charges (including the infrastructure charges – and, in some cases, the transferring of collective areas to the Municipality / payment of eventual deposit), the PC is submitted to the Municipality and the construction works may begin. As the current framework of the PC procedure was seldom used in the past, experience in applying (or reacting to) this procedure is currently very limited.

The new regime of 2024 aimed to channel a broader set of projects to the PC procedure. In some cases, it exempts projects of any licensing procedure. It also foresees the possibility of projects being tacitly approved. This regime has raised some doubts and is currently under revision by the Government.

Finally, it is worth mentioning that the government has taken measures to create conditions for the purchase of real estate for permanent residency by first-time home purchasers, up to the age of 35, by (i) exempting such purchase from Municipal Property Transfer Tax ("IMT"), Stamp Duty ("*imposto de selo*") and registry fees, as established in the [Decree-Law no. 48-A/2024, of July 25](#), and also by (ii) implementing a public personal guarantee to credit institutions in order to enable the grant of loans, under the terms established in the [Decree-Law no. 44/2024, of July 10](#).

#### 4. How is ownership of real estate proved and are ownership records available for public inspection?

The ownership of real estate is proved by the registry of the property at the land registry office, as well as at the tax authorities. The Portuguese legal system encompasses a national registry system, with several geographical land registry offices, for the registry of ownership and other rights over real estate. Ownership and other rights subject to registry (e.g., mortgages and other encumbrances) are only enforceable against third parties if duly registered.

#### 5. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

There are no restrictions on who can own real estate in Portugal. Notably, there are no restrictions based on the nationality of the natural person or the location of the registered head offices of legal entities who intend to acquire real estate in Portugal. However, any natural person or legal entity who intends to purchase real estate

must have the legal capacity to do so, under the applicable law, and must be compliant with Portuguese law. Moreover, acquisition of real estate in Portugal through entities based on certain listed tax places ("tax havens") may attract negative tax consequences.

## 6. What types of proprietary interests in real estate can be created?

Within the Portuguese legal system, there are several types of proprietary interests that can be created over real estate. The more common proprietary interests are: (i) full ownership, which includes full and exclusive right of use, enjoyment, and disposal of the property; (ii) co-ownership, in which two or more persons hold ownership rights over the same property and, as a rule, have to contribute to the necessary expenses in proportion to their respective interests in the property; (iii) usufruct right, which grants its holder the powers of use, enjoyment, and administration of a property owned by another person, during an agreed period or in perpetuity; (iv) surface right, which grants the right to build or maintain, in perpetuity or temporarily, a construction on land belonging to another person, or to plant or maintain plantations on such land; (v) lease agreements that grant a temporary right of use of real estate against the payment of a rent; (vi) lending agreements, which confer a temporary right of use of a property without economic compensation.

## 7. Is ownership of real estate and the buildings on it separate?

In principle, under Portuguese law, the owner of the land is also the owner of the constructions made over (or below) that land. Nevertheless, it is possible to separate both rights, by creating a surface right over the land, which consists in the right to build or maintain, in perpetuity or temporarily, a construction on land belonging to another person.

## 8. What are common ownership structures for ownership of commercial real estate?

In Portugal, various ownership structures can be used for commercial real estate, depending on factors such as the size of the investment, the number of owners, and tax considerations. Common ownership structures include corporate structures, such as, ownership through a limited liability company ("*sociedade por quotas*") or a public limited company ("*sociedade anónima*") and collective investment undertakings, notably ownership

through real estate investment funds known in Portugal as "*OIA Imobiliários*". In addition, it is also possible to assign the exploitation and/or the management of commercial or offices centres to an entity different to the owner of the asset.

## 9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

The due diligence process is not mandatory, but it is common practice and highly recommendable. The scope of the due diligence varies significantly depending on the dimension and complexity of the transaction. For retail low value transactions, the due diligence consists basically in confirming the ownership, that there are no mortgages, charges or other encumbrances registered over the property, that there are no outstanding taxes related to the property and that all the other documents required for the deed (e.g., energy certificates) are valid and updated. In general terms, the due diligence implies (i) obtaining the land registry certificate of the property to check if the vendor is the registered owner of the property, if there are any mortgages, charges or encumbrances over the property and if the property is correctly described and there no inconsistencies between the legal and tax certificates; (ii) carry out searches to confirm that there are no outstanding municipal property taxes related to the property; (iii) confirm that the use permit and the energetic certificate issued for the property are valid; and (iv) if applicable, check the horizontal property deed and confirm that there are no outstanding debts to the condominium administration.

For larger transactions, it is usual to conduct a much more thorough due diligence exercise on the property, including not only the ownership, charges and taxes, but also any agreements with third parties, urban, planning, licensing, and environmental aspects. It would also be usual to conduct a technical due diligence on the property. The tax and legal due diligence are generally based on the documentation provided by the seller and on the documentation and information made available by the public relevant entities (land registry offices, tax departments, municipalities, etc.).

## 10. What legal issues (if any) are outside the scope of the usual legal due diligence process on an acquisition of real estate?

Depending on the agreed scope, due diligences can cover almost all and every legal relevant aspect related to the real estate. However, there are certain legal issues that

may only be identified through a site inspection, such as certain environmental issues, unknown illegal occupants, non-authorized works and, in general, compliance with planning and building regulations. For large transactions, it is customary and advisable to conduct a technical due diligence.

### 11. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

The transaction of a real estate in Portugal normally begins with the execution of a promissory sale and purchase agreement ("PSPA") which establishes the terms and conditions of the sale, according to which the owner promises to sell, and the purchaser promises to buy, the property, at an agreed price and within an agreed period. This agreement usually involves the payment of a deposit ("*sinal*"). The final deed is typically subject to the non-exercise of any applicable pre-emption rights (meaning that after the execution of the PSPA, the public and private entities who are entitled to such pre-emption rights must be notified of the intended sale and purchase, in order to exercise their pre-emption rights within the applicable time limit), but it can also be subject to other conditions such as the promissory purchaser raising a loan to finance the acquisition of the property or the promissory seller obtaining all the documents required for the sale. Unless otherwise agreed by the parties, in case the buyer fails to complete the purchase, he will lose the deposit paid under the PSPA; if, on the contrary, the seller fails to complete the sale, he must repay the amount of the deposit in double. Once all the conditions precedent are fulfilled, the real estate transaction is completed through the execution of a notarial deed or an authenticated document (with similar force to the deed) signed between the seller and the purchaser. The sale and purchase deed must be preceded by liquidation and payment of municipal transfer tax ("*IMT*") and stamp duty tax ("*imposto do selo*"). Finally, upon the execution of sale and purchase public deed, the acquisition is subject to registration in the land registry office and in the tax authorities.

### 12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

For the purpose of transferring a real estate, both assets deals and shares deals are common, depending on the circumstances of the transaction and of the preference of the parties.

### 13. On the sale of freehold interests in land does the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

Under Portuguese law, and unless otherwise provided for in the lease agreement, the lease agreements are transferred to the purchaser of the leased property. In this event, the landlord must notify the tenant of the sale of the property, informing the tenant of the sale and purchase and that the rent shall be owed to the new owner of the property.

It is worth mentioning that the tenant has a pre-emption right on the purchase of the leased property provided that the lease is in force for a period of at least two years.

### 14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

Commons rights, interests and burdens that can be created or attached over real estate include mortgages and other charges, leases, free leases (lending), usufruct, surface rights, easements, pre-emption rights, purchase options, sale options, retention rights and other covenants. In general, these rights must be registered in the land registry office to be effective vis-à-vis any third parties.

### 15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

There is no split between legal title and beneficial ownership of property in Portugal. Trusts are not recognized under Portuguese law. However, there are other methods which can establish a difference between legal title and beneficial ownership, including fiduciary agreements (with inherent limitations).

### 16. Is public disclosure of the ultimate beneficial owners of real estate required?

There is no requirement for the public disclosure of the ultimate beneficial owners of real estate. The land registry does not recognise a split between legal title and beneficial ownership and thus only the legal owner of property will be recorded. However, it is required by law the identification and the registry of the ultimate beneficial owners of legal entities and, as such, if the property is owned by a company/legal person, the ultimate beneficial owner of that entity will be identified



and registered in the central registry of beneficial owners ("RCBE").

## 17. What are the main taxes associated with real estate ownership and transfer of real estate?

All the parties in a real estate transaction should bear a Portuguese tax number and moreover any non-EU residents must appoint a tax representative in Portugal, unless they adhere to the electronic notification system. The purchaser will be subject to the following taxes:

(i) Municipal property transfer tax ("IMT") to be declared and paid by the purchaser immediately before the transaction (or, in certain circumstances, in the promissory agreement). The IMT rates are 6.5% for urban property, 5% for rural property, and 10% if the acquirer is a company resident in a listed tax haven or a company controlled, directly or indirectly, by a company resident in a listed tax haven. For real estate exclusively intended for residential use, progressive IMT rates between 1% and 7.5% will generally apply in accordance with the taxable value of the property. IMT exemptions may apply, for example, on certain acquisitions of real estate meant for urban rehabilitation, or on the acquisition of property for resale purposes by real estate companies, or in the purchase of real estate for permanent residency by first-time home purchasers up to the age of 35, under the terms established in the [Decree-Law no. 48-A/2024, of July 25](#).

(ii) Stamp duty ("imposto de selo"): the acquisition of a property is also subject to a stamp duty at a rate of 0.8%, as a rule, over the value of the transaction to be paid by the Purchaser. Stamp duty exemptions may also apply in the purchase of real estate for permanent residency by first-time home purchasers up to the age of 35, under the terms established in the [Decree-Law no. 48-A/2024, of July 25](#);

(iii) Municipal property tax ("IMI"): every year the owner of any property is subject to pay an annual municipal property tax. The payment encumbers the owner of the property on 31<sup>st</sup> December of each year. If the tax amount does not exceed €100, the total amount will be paid in May. For taxes amounts between €100 and €500, the total will be divided into two equal parcels, the first for payment in May and the second for payment in November. If it exceeds €500, an additional August instalment is added to these other two mentioned above. The IMI rates are the following, applied over the property's registered tax patrimonial value: 0.8% for rural property; between 0.3% to 0.45% for urban property, depending on the municipality. Municipal urban IMI rates

are revised each year.

Usually, the transfer of property does not attract *Value Added Tax* ("VAT"), although in certain cases the seller may waive the exemption of VAT if, amongst other conditions, the buyer uses, in whole or in part, the building for taxable activities and is itself subject to VAT. On the seller's side, the sale can generate taxable earnings, in accordance with its annual statements.

## 18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

The Portuguese legislation for commercial leases includes several mandatory provisions. Subject to these provisions and other mandatory provisions of the Portuguese law, the parties may establish the content of the lease agreement and their respective rights and obligations as they deem better. Typically, commercial leases include the following main terms and conditions: (i) duration of the lease; (ii) rent and the method of payment; (iii) rent review mechanism; (iv) renewal of the lease; (v) permitted uses and identification of restrictions on the use of the property; (vi) landlord's and tenant's responsibilities regarding the maintenance and repair of the property; (vii) assignment of the contractual position and subletting; (viii) charges and expenses associated with the property, such as taxes and condominium fees; (ix) works to be carried out on the property; (x) termination rights and obligations.

## 19. What remedies are commonly available for landlords in the event of a tenant breach of a commercial lease?

Under the Portuguese jurisdiction, commercial leases are governed by the provisions set out by the parties in the lease agreement, as well as the legal provisions foreseen in [Portuguese Civil Code](#) and complementary legislation. As such, on the commercial lease agreement, the parties are able to establish the terms in which a party could be considered in default and the consequences of such a breach of contract. If the commercial lease agreement fails to include such provisions, the aforementioned legal regime shall apply.

Under article 1041, paragraph 1, of the Portuguese Civil Code, in the event the tenant is in arrears with the obligation of paying rent, the landlord has the right to demand the amounts owed, accrued of a compensation of 20% of such amount. In addition, it is common for the landlord to request a guarantee from the tenant to ensure

the fulfilment of contractual obligations. As an example, the landlord may request a cash deposit, a bank guarantee, or a security ("*fiança*"). In case of breach of contract by the tenant, such guarantee may be used by the landlord to remedy the unfulfillment from the tenant.

The landlord shall be entitled to terminate the commercial lease agreement, in the event of arrears of three months or more in the payment of rent, charges or expenses, for which the tenant is responsible, or in the event of opposition by the tenant to the carrying out of work ordered by a public authority, or in case of breach of other relevant obligations.

## 20. How are use, planning and zoning restrictions on real estate regulated?

In general terms, the land use, planning and zoning restrictions in Portugal are regulated by law and by planning instruments which shall be in compliance with the legal framework on planning matters. The planning instruments are divided into different levels: national, regional, intermunicipal and municipal. A practical approach to planning in Portugal includes mostly the municipal level, composed by three planning instruments: the general plan ("*PDM*") the master plan ("*PU*") and the detail plan ("*PP*"). National parks, the coastline and protected natural areas are also subjected to special planning instruments, usually specifying restrictions applicable to development. More recently, the Government has also enacted relevant regulations and plans applicable to fire safety and flooding in forest and urban areas, such as the municipal fire safety plans ("*PMDFCI*") and flooding risk management plans ("*PGRI*"). There is also a large set of administrative servitudes and public restrictions in force at national level, aiming to protect natural and heritage values.

On a higher level, it should also be considered the national planning policy program – which, in general, establishes the strategic options relevant to the organisation of the national territory –, and the regional level which includes only the regional programs. Intermunicipal level is currently irrelevant. While most of the national and sector level instruments bind only public entities, municipal plans bind both public and private entities. Please note that the entire Portuguese territory is covered by general municipal plans ("*PDM*") which define the main strategy for the preparation of other municipal plans, as well as for the development of sectoral interventions by the state administration in the Municipalities. The elaboration of these plans ("*PDM*") is, as a rule, mandatory. The Government is making an effort to make planning instruments more flexible and quicker

to approve.

## 21. Who can be liable for environmental contamination on real estate?

In general, under Portuguese law, the author of the environmental damage caused by the contamination (the polluter) is responsible for its remediation, under the terms of the polluter pays principle. Accordingly, under the terms of the legal regime for liability for environmental damage (Decree-Law 147/2008, of July 29), the economic operator is responsible for repairing the environmental damage caused in the exercise of one of the activities listed in annex III of this legal regime and, when the activity is imputable to a legal person, the obligations apply jointly and severally to its directors, managers or administrators. Besides the polluter, the State can also repair the environmental damage caused by contamination, when it is not possible to attribute this responsibility to the author of the environmental damage.

Regarding soil contamination, the non-polluting owner (or possessor) may also be responsible for decontaminating the soil if this is provided for in the applicable planning instruments.

## 22. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

Yes, the buildings are legally required to have their energy performance assessed. The requirements for energy performance assessments and the situations in which minimum energy performance levels need to be met are governed by Decree-Law 101-D/2020. In Portugal, the energy performance of buildings is assessed through an Energy Performance Certificate ("*certificado energético*"). In general terms, the following elements are subject to the energy certification obligation: a) the construction of new buildings; b) major building renovations; c) large commercial and service buildings; d) buildings owned and occupied by a public entity and frequently visited by the public; e) buildings, when they are sold, given in lieu of payment, leased or transferred, provided that this includes the transfer of the physical space in which the establishment is installed; f) buildings that are the target of financing programs to improve energy performance; g) buildings eligible for tax benefits. Regarding compliance with minimum performance levels, it should be noted that new buildings shall have almost zero energy needs. Minimum energy performance requirements must therefore be complied with in relation to the building

surrounding, which are aimed in particular at minimizing the occurrence of pathologies and limiting energy needs in order to achieve comfortable indoor conditions.

### 23. Is expropriation of real estate possible?

Yes. However, the expropriation of real estate may only be carried out for reasons of public utility included in the powers, purposes or object of the expropriating entity, upon the payment of a fair compensation in accordance with the [Portuguese Expropriation Code](#).

### 24. Is it possible to create mortgages over real estate and how are these protected and enforced?

Yes, it is possible to create mortgages over real estate. In fact, mortgages are the most widely used security for real estate assets. Mortgage is a security in rem ("*garantia real*") that grants the creditor the right to be paid for the value of a certain immovable or similar assets belonging to the debtor or to a third party, with preference over other creditors who do not enjoy special privilege or priority of registration. Thus, the creditor who holds a mortgage has,

with a few exceptions, a preference right in the satisfaction of his claim over the other creditors of the owner of the mortgaged property in the event of an enforcement judicial procedure.

### 25. Are there material registration costs associated with the creation of mortgages over real estate?

Yes, there are material registration costs associated with the creation of mortgages over real estate.

Specifically, according to the [Emoluments Regulation for Registries and Notaries](#), 122 euros is due for the deed and 500 euros is due for the registration of the acquisition of a property and of one or more mortgages over the same property.

### 26. Is it possible to create a trust structure for mortgage security over real estate?

As above referred, trusts are not recognized under Portuguese law. It is disputable whether a mortgage may be registered in the name of a security agent to the benefit of the lending banks.

## Contributors

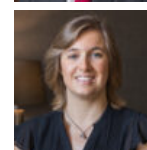
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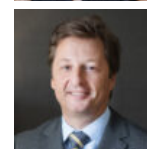
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