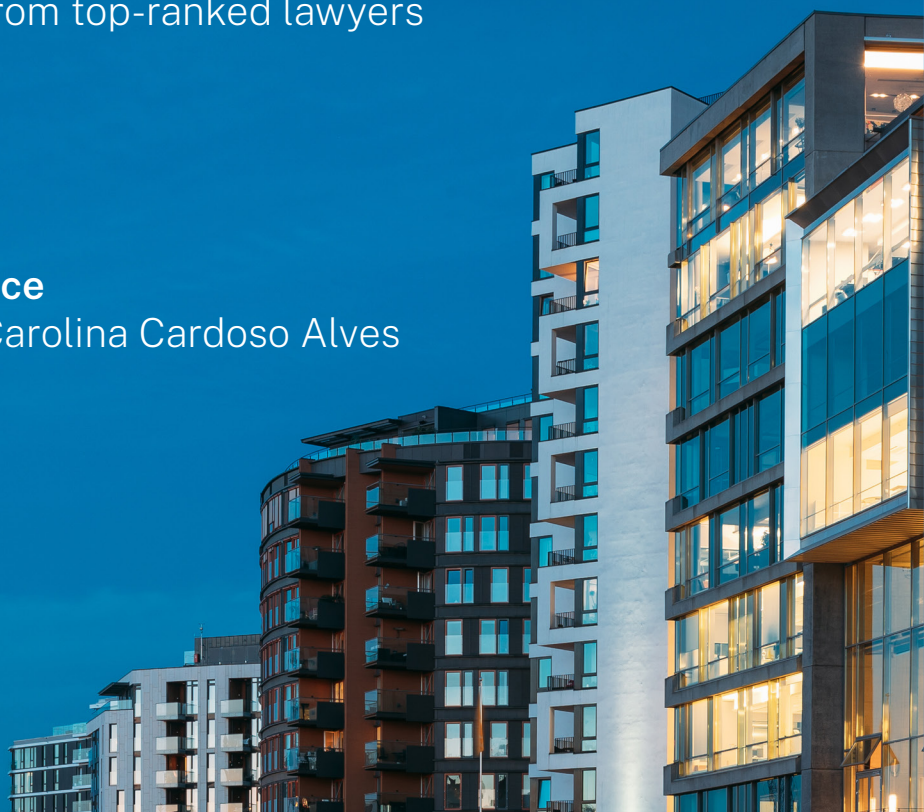

CHAMBERS GLOBAL PRACTICE GUIDES

Real Estate 2025

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Portugal: Law & Practice

João Gonçalo Galvão, Carolina Cardoso Alves
and Miguel Paquete
CS'Associados



PORTUGAL



Law and Practice

Contributed by:

João Gonçalves, Carolina Cardoso Alves and Miguel Paquete
CS'Associados

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CS'Associados is a top-tier Lisbon-based firm with a reputation built on the establishment of a close professional relationship with clients and on the quality of the legal services provided. Its real estate practice is endowed with distinctive features, namely: constant partner involvement and permanent access to top senior advice, expertise and homogeneous quality; a highly experienced team in the entire spectrum of real estate, combining ancillary competencies spanning from corporate law to urban planning and tax; skilled M&A and financial focus; and a thorough approach to all real estate-related

matters, encompassing assistance from start to finish with projects and deals, covering not only asset acquisition but also (re)development, (re) financing and subsequent sale and/or operation. The firm's real estate practice comprises 1 fully dedicated partner, 2 managing associates, 2 counsels and 1 associate. The authors would like to thank Antnio Rocha Mendes, Joo Ferreira do Amaral, Pedro Duro, Joana Avelino Gomes, Andr Salgado Matos, Jos Lus Queir, Andr Fernandes Bento and Filipa Cristvo Ferreira for their contributions.

Authors



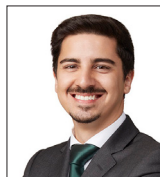
Joo Gonalo Galvo is a partner and heads the real estate practice at CS'Associados, and also has experience in the M&A and private equity practices. With

more than 15 years of experience, he is a transactional lawyer who provides advice on domestic and cross-border real estate M&A transactions and other real estate matters to corporate clients, investment funds and real estate developers and investors. Joo also advises on sale and leasebacks, complex lease and property use arrangements, and development/construction agreements. Joo has been a member of the Portuguese Bar Association since 2005.



Carolina Cardoso Alves is a managing associate in the real estate practice at CS'Associados. She provides legal advice to local and cross-border clients on all real estate-

related matters. She has a comprehensive knowledge of urban planning regulations and other relevant regulatory matters in transaction structuring and real estate development operations.



Miguel Paquete is a managing associate in the real estate practice at CS'Associados. He has been advising on real estate transactions in the residential and commercial domain,

supporting the development of agricultural projects and renewable energy projects, as well as advising and accompanying banking institutions on transactions for the purchase and sale of real estate portfolios.

CS'Associados

Avenida da Liberdade, 249,
8.º andar,
1250-143
Lisboa

Tel: +351 211 926 800
Email: sofia.patricio@csassociados.pt
Web: www.csassociados.pt/en/

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1. General

1.1 Main Sources of Law

The Portuguese Civil Code (CC) is the main source of real estate law, stipulating the types and features of property rights, as well as the rights, charges and encumbrances affecting ownership.

The CC also regulates the main aspects of leases, as supplemented by the New Urban Lease Regime (NRAU) and the New Rural Lease Regime. Also set forth in the CC are the provisions that govern co-ownership of real estate assets, as well as the condominium regime and the fundamental aspects of construction agreements.

Other important sources include several pieces of legislation on housing, protection of cultural heritage, as well as the construction and licensing of properties.

1.2 Main Market Trends and Deals

2024 was a positive year for commercial real estate, with investment reaching approximately EUR2,370 million, a 47% increase over 2023.

Retail was the main trending sector, representing approximately EUR1,130 million, with deals involving shopping centres and supermarkets.

The hotel sector represented 20% of investment, with high-profile assets changing hands. The office sector was less active but should continue gaining momentum, with the take-up of office spaces and flexible office policies.

2025 is viewed optimistically despite the many uncertainties. Inflation and interest rate policies continue to be key factors amid geopolitical tensions, adjustment of economic strategies, increased energy and construction costs, and tariff battles.

Other trends such as ESG and sustainability, digitalisation and the AI revolution are expected to continue changing the way real estate is built and used.

1.3 Proposals for Reform

Recently, the legal framework for territorial management instruments was amended to create a special regime that allows for the reclassifying of urban land where construction was previously forbidden by urban planning instruments, limited to cases where the construction purpose is resi-

dential or mainly residential. Aiming to increase land availability and encouraging development to strengthen the response to the housing crisis, this new legal framework has been in force since January 2025; it is too soon to assess its results and impact.

2. Sale and Purchase

2.1 Categories of Property Rights

Ownership is the broadest property right, an in rem right encompassing the right to use, receive the benefits of and dispose of a property, subject to the restrictions set forth in law.

A property may be held individually or jointly in co-ownership, with each person owning a share according to the percentages agreed, or all shares being equal if the property title does not provide otherwise.

Other in rem property rights include:

- surface rights, entitling their owner to construct on or cultivate (above or below the surface) land owned by a third party and to maintain title to the constructions or cultivations, on a perpetual or temporary basis; and
- usufruct and right of use, which entitle their holder to use and enjoy a third-party property, fully but temporarily, without being entitled to alter its form or substance.

2.2 Laws Applicable to Transfer of Title

The transfer of title to real estate is governed by the CC, but specific regimes such as the Framework Law on Housing and the Framework Law on Cultural Estate, among others, should be considered as they establish restrictions on transferability, such as pre-emption rights in favour of public entities.

The transfer of title to accommodation units located in tourist developments is governed by the legal framework for the installation, operation and functioning of tourist developments, which defines different transferability requirements considering the specific nature of the asset.

2.3 Effecting Lawful and Proper Transfer of Title

The transfer of title to real estate is effected via public deed or authenticated private document. Although transfer of ownership produces immediate effects, registration thereof must be submitted to the Land Registry Office (LRO).

All real estate is registered with the LRO as well as with the Tax Department. The purpose of the first registration is to record the property's identification details (location, description, area sizes) and relevant circumstances and events so that title and encumbrances can be ascertained. The purpose of registration with the Tax Department is to report and provide information relevant for tax purposes, including ownership and patrimonial value. Rural properties also have a geographical representation on an online platform.

2.4 Real Estate Due Diligence

Legal due diligence on properties seeks to verify ownership and identify any encumbrances; assessment of the assets' tax status, urban planning/licensing status and other regulatory requirements (including environmental) is also important. Legal due diligence also seeks to identify any negative consequences that may be triggered by the envisaged transaction.

Technical due diligence relies on inspections and surveys, and focuses on assessing the suitability of the assets, construction status and the existence of any structural or hidden defects. Techni-

cal analysis may also be made of urban planning aspects.

Finally, analysis of environmental matters may be critical for certain assets in order to assess the presence of any potentially hazardous or dangerous substances.

2.5 Typical Representations and Warranties

Commercial real estate transactions usually involve a wide range of representations and warranties, the most standard covering:

- capacity and authority;
- binding nature of the agreement with no contravention;
- lawful title, possession and ownership;
- non-existence of charges or encumbrances, or limits to use or transferability;
- suitability and validity of all licences;
- compliance with applicable legal provisions;
- non-existence of hazardous or dangerous substances, as well as of defects;
- non-existence of pending or threatened litigation or disputes;
- non-existence of debts, including taxes, charges and fees; and
- corporate aspects (for share deals).

Post-transaction protection for the buyer is usually put in place via a combination of specific indemnities and compensation for breach of the representations and warranties. The seller's liability may be subject to time and value limitations (including minimum thresholds and caps), though so-called fundamental warranties are normally not subject to any limitations.

It is not uncommon for W&I insurance policies to be put in place in mid to high-value deals.

2.6 Important Areas of Law for Investors

Investors should be aware of the civil law governing ownership and title over real estate, but also of the requirements for licensing, construction and usability. Tax aspects are also paramount, such as tax costs entailed by the acquisition and ownership of real estate, as well as the taxation applying to operation proceeds and exit.

Corporate aspects should also be considered, either in the case of share deals or regarding the setting up and structuring of special purpose vehicles (SPVs).

Concerning asset operation, investors should consider not only the regime applying to their lease and other forms of assigning their use or operation (particularly of commercial schemes), but also the framework applying to tourist-related assets.

2.7 Soil Pollution or Environmental Contamination

Environmental responsibility rests with those persons or entities that caused or did not take the necessary steps to avoid or mitigate environmental damage. As such, acquisition of real estate in Portugal does not automatically entail any responsibility for historical environmental contamination or pollution of non-excavated contaminated soils and permanent buildings with a permanent connection to the ground. However, once contaminated soil is excavated, it will be considered as waste produced by the property owner, who will then be responsible for handling and processing it. Moreover, although responsibility for mitigation of soil contamination rests with the persons or entities that caused or failed to avoid or mitigate the contamination, these may be in practice impossible to identify or to hold accountable, especially when the contamination is remote historically, in which

case the owner will have to ensure the required mitigation is carried out as a legal condition for developing the asset.

2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

Most municipalities have online platforms that detail the land management instruments governing a particular parcel of real estate, which, when combined with an analysis of the applicable regulations, makes it possible to understand the permitted uses.

If the municipality does not have such a platform, it should in any case provide information to any interested parties regarding applicable land management instruments and the permitted uses, either through exercise of a right to information or through requests for prior information.

Developers may enter into planning agreements with the municipality for drafting, revision and amendment of specific municipal plans.

2.9 Condemnation, Expropriation or Compulsory Purchase

All public entities and concessionaires for public services are entitled to expropriate land.

An expropriation procedure may be carried out by amicable agreement or in courts, and in either case requires payment of fair compensation.

Once the expropriation decision is taken, the process steps are:

- firstly, attempt to acquire the property by means of private law; and
- secondly, request the competent body to declare the expropriation to be of public utility (with possible public takeover of the property).

Private property can also be compulsorily transferred to public entities, on the basis of urgent motives and on public or national interest grounds, with its owner being entitled to suitable compensation.

2.10 Taxes Applicable to a Transaction Asset Deals

Real estate transactions in Portugal may be subject to:

- real estate transfer tax (RETT) – ranges from 1% to 10%, based on the value, location and use of the property, applied to the higher of the declared or tax value;
- (stamp duty – fixed at 0.8%, applied similarly; and
- VAT – 23% in specific cases, eg, new or renovated properties sold by VAT-registered entities.

Buyers pay these taxes, along with notarial and registration fees.

Share Deals

RETT applies if:

- over 50% of company assets are real estate;
- they are not used for agriculture/industry/commercial activities;
- the buyer gains 75% control or more.

RETT Exemptions or Rate Reductions

There are RETT exemptions or rate reductions available for:

- resale/restoration;
- historic properties; and
- primary residences.

2.11 Legal Restrictions on Foreign Investors

Without prejudice to the particular constraints that apply to sanctioned jurisdictions, foreign investment in real estate is by default granted a level of protection similar to domestic investment, with no specific legal or regulatory measures applying.

Nevertheless, transactions targeting real estate assets are subject to a number of information requirements whose purpose is to bring additional clarity and transparency, particularly as concerns anti-money laundering and anti-terrorism funding measures, as well as in regard to obligations concerning identification of the ultimate beneficiaries holding direct or indirect control over legal entities.

3. Real Estate Finance

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate are normally financed through structured syndicated loans secured by real estate assets, normally granted to an SPV with or without recourse to the sponsor. Equity contributions are normally required in order to fulfil certain loan-to-value ratio requirements. More complex transactions may involve senior and junior debt. Alternative sources of financing, such as real estate investment funds and private equity, may be also considered.

3.2 Typical Security Created by Commercial Investors

Security structures normally consist of mortgages over real estate assets complemented by a pledge over shares representative of the share capital of the borrower (if an SPV), a pledge over

dedicated bank accounts and a pledge/assignment by way of security over receivables relating to the operation or development of the asset, including performance bonds from contractors (of which the lenders may be co-beneficiaries).

Lenders are also normally designated as co-beneficiaries of the insurance policies relating to the financed real estate assets.

3.3 Restrictions on Granting Security Over Real Estate to Foreign Lenders

There are no restrictions on granting security over real estate to foreign lenders. However, to directly benefit from a mortgage (ie, other than through the appointment of a security agent, the validity of which needs to be suitably ascertained), foreign lenders are required to apply for a Portuguese corporate identification number (a relatively straightforward formality).

There are no restrictions on repayments being made to a foreign lender under a security document or loan agreement. Note, nevertheless, that withholding tax on payment of interest will apply.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

The granting of security is generally subject to stamp duty, calculated based on the maximum secured amount at rates of up to 0.6%, depending on the maturity of the underlying secured obligations. However, stamp duty may not apply if the security is provided to secure liabilities arising from a loan granted simultaneously with the security, provided that the loan itself is subject to stamp duty.

Registration fees and notarial fees are also applicable, whose amount may vary depending on the number of securities being granted.

3.5 Legal Requirements Before an Entity Can Give Valid Security

Companies may grant security as collateral to their own liabilities within the performance of their activity.

However, the granting of security as collateral for third-party liabilities is restricted by corporate benefit rules. Any security interest provided for third-party liabilities is deemed null and void, unless it secures the liabilities of a company with which the security provider is in a control relationship or if it has a justified corporate interest therein (which may include a direct or indirect economic benefit to its activities).

Regarding financial assistance restrictions, any security granted by a company to secure liabilities related to the acquisition of its share capital is considered null and void.

3.6 Formalities When a Borrower Is in Default

Contractual provisions requiring the prior acceleration of secured liabilities as a requirement for security enforcement are standard. Judicial enforcement proceedings involve a court application, seizure of the property and public sale. The principle is that the priority of a security interest is determined based on the date of its creation (this being assessed, in the case of a mortgage, by the priority of its registration with the LRO). The lender's mortgage, if registered as a first-ranking mortgage, gives priority over creditors that do not benefit from statutory liens (such as legal expenses, real estate tax and transfer taxes) and allows the property to be sold free of prior security interests.

The timeframe for enforcing a mortgage can vary from several months to over a year, depending on court workload and the parties' statements.

At time of writing, lenders are actively exercising their foreclosure rights whenever necessary and there is an active market for non-performing loan portfolios.

3.7 Subordinating Existing Debt to Newly Created Debt

Existing mortgage-secured debt may become subordinated to newly created debt by agreement between secured creditors, such agreement to be entered into as a public deed or authenticated private document and submitted for registration. The ranking assignment is in principle subject to debtor and security provider authorisation.

Furthermore, creditors may agree to subordinate secured debt through intercreditor agreements in restructuring scenarios where new debt is ranked with priority. Under the Portuguese Insolvency Code, the so-called Special Revitalisation Procedure allows new financing under a recovery plan to be given preferential treatment over existing secured debt. Moreover, under the Extrajudicial Business Recovery Regime, new financing can be given priority subject to creditors' agreement.

3.8 Lenders' Liability Under Environmental Laws

Please see 2.7 Soil Pollution or Environmental Contamination.

3.9 Effects of a Borrower Becoming Insolvent

Security interests do not automatically become void upon insolvency.

However, security created within the two years prior to an insolvency may be voided if deemed fraudulent or preferential, especially if granted for pre-existing debt. Furthermore, cases in

which the debtor provided in rem guarantees for pre-existing obligations or other obligations replacing them, or simultaneously with incurring new guaranteed obligations, respectively within six months or 60 days prior to the commencement of insolvency proceedings, may be settled in favour of the insolvency estate.

Secured creditors cannot enforce their security during insolvency proceedings, but may provide input on the type of sale and minimum price of the encumbered asset, having also the right to request to acquire the real estate.

Creditors that benefit from statutory liens rank before secured creditors, which otherwise retain priority over the secured asset, above common and subordinated creditors.

Security interests granted as part of new financing during insolvency proceedings are generally upheld to encourage business recovery.

3.10 Taxes on Loans

Both lenders and borrowers involved in real estate mortgage loans are subject to stamp duty, levied on the value of the loan (tax rates varying as per loan maturity) or, if the mortgage is not granted simultaneously with the loan being entered into, on its maximum secured value (rates also varying as per mortgage duration). Furthermore, notarial/authentication fees will apply in respect of the deed or private document titling the mortgage incorporation, as well as LRO fees for registration.

At time of writing, there are no publicly available indications of pending or proposed changes to the existing tax regulations concerning mortgage or mezzanine loans in Portugal.

4. Planning and Zoning

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

The planning and zoning controls applicable to regions are determined through sectorial, special or regional programmes. Sectorial programmes are, in essence, a specification of public policy. Special programmes envisage the fulfilment of objectives deemed indispensable for the protection of public interest in national natural resources. Regional programmes establish a territorial development strategy for the relevant region. All these programmes are binding exclusively on public entities and may apply to one or more regions or municipalities.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

At time of writing, the design, appearance and method of construction for new buildings or refurbishment of existing buildings is regulated by the General Regulation for Urban Constructions (approved by Decree-Law 38382 of 7 August 1951), by specific legislative and governmental acts regarding engineering projects, and by municipal plans.

The General Regulation for Urban Constructions shall be deemed revoked from 1 June 2026 onwards. Until said date, the Portuguese Government is mandated to prepare a Construction Code that will contemplate all technical rules applicable to construction projects.

4.3 Regulatory Authorities

The municipalities set the regulation for development and designated use of individual parcels of real estate through municipal plans, namely master plans, urbanisation plans or detailed

plans. These plans are binding on private parties and public entities in the context of a project development and are issued in accordance with the Legal Framework for Land Management Instruments, approved by Decree-Law 80/2015 of 14 May.

The municipal master plan must be approved and applied in all municipalities and sets the general zoning rules applicable to its different areas.

The urbanisation plan and the detailed plan are applicable to specific areas of a municipality. The first enhances the municipal master plan land use rules for part of the municipal area, whereas the latter details any proposals for occupation of land, namely by establishing construction areas and volume, specific construction rules, location of infrastructure or public spaces.

The drafting of all such plans is subject to a public consultation stage.

4.4 Obtaining Entitlements to Develop a New Project

The right to develop a new project or complete a major refurbishment is obtained through a prior control procedure (namely, through a permitting procedure or the submission of a prior communication – depending on the type of works or location thereof).

The permitting procedure for the development of a project (and major refurbishments) entails:

- (i) preliminary assessment of the application;
- (ii) consultation of external entities;
- (iii) approval of the architectural project;
- (iv) presentation of engineering projects;
- (v) issuance of a receipt for the payment of the applicable fees, which, for all legal purposes,

is deemed as the construction permit; and

(vi) issuance of the permit.

It is common practice in some municipalities to deem necessary a public consultation stage for specific works.

It is possible to develop a new project in empty land through an allotment operation. In this case, the permitting procedure is slightly different, as the municipality is bound to issue an overall decision on the application (but stages (i), (ii) and (v) above still apply). The public consultation stage is carried out prior to such decision and is mandatory provided that the allotment operation exceeds certain thresholds relating to area, number of units or population density.

As for the prior communication, this is a more streamlined procedure entailing (i) preliminary assessment of the request and (ii) payment of municipal fees.

4.5 Right of Appeal Against an Authority's Decision

The right of appeal of any authority's decision in respect of an application for permission for development or the carrying on of a designated use shall be exercised within the municipality or judicially with competent administrative courts.

The affected party is entitled to request that the author of the decision or their highest superior re-evaluate the initial ruling. These re-evaluation requests shall be deemed tacitly approved if no decision is issued within 30 business days.

Judicially, any affected party – eg, the developer – or the state prosecution may challenge the municipality's position through an action or

an injunction in the administrative courts against the municipality.

4.6 Agreements With Local or Governmental Authorities

From a planning and zoning perspective, the developer may enter into planning agreements with the municipality for drafting, review and amendment of a specific municipal plan.

In addition, the municipal plan may also contemplate the transfer of development rights whereby a specific allowed construction level may be transferred to another property or plot.

Finally, the municipal plan – typically through a planning and operation unit or, specifically, in the urbanisation or detailed plans – may establish an execution system whereby, within the framework of an urbanisation agreement entered into by and between the municipality and the developer, the general rights and duties to be complied with by each party are established.

4.7 Enforcement of Restrictions on Development and Designated Use

The restrictions on developments and designated use are enforced, firstly, in the stage of consultation of external entities within a licensing procedure, considering that these entities will be competent to issue an opinion, a decision on an authorisation or an approval (eg, an environmental impact assessment declaration or a binding opinion for works carried out in a classified building).

In a later stage, such as during or after the execution of the works, the municipality is entitled to apply any necessary measures or correction orders such as the embargo of works, their modification or their demolition. If the developer does not comply with the aforementioned measures

or orders, the municipality may enforce them by administrative takeover of the property and by coercively carrying out the necessary measures or orders, charging to the developer all expenses arising therefrom.

5. Investment Vehicles

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

The most common entities to hold real estate assets are:

- *Private limited liability companies (Lda.)*: Typically used for small to medium-sized investments, offering limited liability and a streamlined management structure.
- *Public limited liability companies (S.A.)*: Used for larger investments or public listing, facilitating capital raising but requiring more complex governance and regulatory compliance.
- *Real estate investment funds/companies*: These entities pool capital to invest in real estate, providing passive investment opportunities with shared risks and returns. Funds can be closed or open-ended, offering liquidity and diversification, while companies are often used by institutional investors for large projects.
- *Real estate investment and management companies (SIGs)*: See 5.3 REITs.

5.2 Main Features and Tax Implications of the Constitution of Each Type of Entity

- *Lda.*: These are simple to set up, with a minimum of one investor and low administrative costs. Subject to a corporate income tax (CIT) rate of 16% for income up to EUR50,000 and 20% if higher.
- *S.A.*: These have a more complex governance structure and regulatory obligations, with a

five-investor minimum. Subject to a CIT rate of 16% for income up to EUR50,000 and 20% if higher.

- *Real estate investment funds/companies:* These involve complex regulatory requirements due to their collective investment structure and the need for ongoing reporting. Profits are exempt from CIT including real estate income, capital gains, interest and dividends. Foreign investors may benefit from a special 10% withholding tax rate on income paid by these entities.
- *SIGIs:* See 5.3 REITs.

5.3 REITs

Portuguese REITs, so-called SIGIs, focus on acquiring real estate rights for rental or other economic uses, shares in companies with similar purposes and investing in real estate investment funds with similar income distribution policies or funds or companies for residential lease.

SIGIs are required to take the S.A. form, with a specific supervisory structure (audit committee and external auditor). SIGIs are available to foreign investors and can be set up with or without public subscription. Within one year from set-up, their share capital must be traded in a regulated market or multilateral trading system operating in Portugal or within the EU/EEA. At least 20% of the share capital of SIGIs should, as of the end of the third year of trading, be dispersed between investors holding, individually, no more than 2% of voting rights, this increasing to 25% at the end of the fifth year.

SIGIs must meet several statutory requirements, including maintaining a minimum debt limit of 60% of total assets and holding real estate-related rights for at least three years.

SIGIs' profits are exempt from CIT, including real estate income, capital gains, interest and dividends. Foreign investors may benefit from a special 10% withholding tax on income paid by SIGIs.

5.4 Minimum Capital Requirement

- *Lda.:* Minimum share capital of EUR1.
- *S.A.:* Minimum share capital of EUR50,000.
- *Real estate investment funds/companies:* For funds there is no minimum capital requirement. Real estate investment companies must have a minimum share capital of EUR50,000 if they are managed by an external manager, or EUR300,000 if they are self-managed.
- *SIGIs:* Minimum share capital of EUR5 million, which must be fully subscribed and paid up at the date of their incorporation.

5.5 Applicable Governance Requirements

- *Lda.:* A sole director or a board is required. A chartered accountant is needed if the company for two consecutive years exceeds two of the following: EUR1.5 million in assets, EUR30 million in turnover or 50 employees.
- *S.A.:* Sole director or board (if share capital exceeds EUR200,000) and chartered accountant. Exceeding two of the following limits for two consecutive years – EUR20 million in assets, EUR40 million in turnover or 250 employees – triggers the requirement for a three-member supervisory board.
- *Real estate investment funds/companies:* Typically externally managed, under the oversight of the Portuguese Securities Commission (CMVM), with prudential and reporting requirements. If in company form, the S.A. governance structure must also be adopted. A depositary is required, unless certain conditions are met.

- *SIG/Is*: Require a board of directors, auditing board and a chartered accountant.

US investors must disclose their ownership interests in foreign companies to the Financial Crimes Enforcement Network (FinCEN). Also, in Portugal, US investors need to disclose their ownership interests in case they are beneficial owners (holding 25% or more of the entity).

5.6 Annual Entity Maintenance and Accounting Compliance

Lda./S.A.: Annual costs include accounting, tax filings, corporate secretarial work, registration fees, fees paid to members of corporate bodies, and (when applicable) chartered accountant fees.

Real estate investment funds/companies:

- Monthly CMVM fees (0.0266%/NAV).
- Quarterly stamp duty (0.0125%/NAV).
- Management fees (to be agreed with manager, normally ranging between 0.4% and 0.6%/commitments).
- Depositary fees (to be agreed with depositary, normally ranging between 0.025% and 0.10%/NAV).
- Regulatory compliance.

SIG/Is: Same costs as *S.A.* with auditing board, plus additional audit costs every seven years, regulatory compliance and Euronext fees.

6. Commercial Leases

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

According to Portuguese law, a person or entity may occupy and use real estate for a limited

period of time without buying it by entering into one of the following arrangements:

- agreements with in rem effects – surface right, usufruct, right of use and housing, easement or right of periodic habitation;
- lease agreement;
- free use agreement;
- shop use agreement (typical of shopping centres);
- agreement for the use of space and provision of services (typical for office centres); or
- concession or other licences and authorisations (granted by the State, autonomous regions or local authorities).

6.2 Types of Commercial Leases

Lease agreements of urban properties are entered into for either residential or non-residential (commercial) purposes. There are no specific subtypes or distinct regulations within the non-residential lease type (such as offices, retail or hotels), although the parties tailor the terms and conditions thereof to the underlying activity.

Commercial properties may also be occupied under atypical lease-type agreements due to the composition and regulation of different interests, property use dynamics and undertakings (specifically from the owner, by committing to more than just passively allowing the use of premises). These agreements are a mix between lease and services agreements, and are quite common in relation to shopping centres (shop use agreements), office spaces and even logistics centres (agreement for the use of space and provision of services).

6.3 Regulation of Rents or Lease Terms

The NRAU gives wide flexibility to the parties of commercial leases to regulate the respective

terms and conditions, limited however by some mandatory rules (as further detailed hereunder).

In general, the parties may freely determine the rules applicable to the duration, termination and renewal of leases for commercial purposes. The NRAU general regime applies if the parties do not expressly regulate differently.

The parties may also freely establish rent values and the evolution thereof as well as an intended rent update regime (see **6.5 Rent Variation** and **6.6 Determination of New Rent**).

6.4 Typical Terms of a Lease

Duration

Maximum initial term duration of 30 years. In the absence of express stipulation, duration shall be of five years, with no limitations existing regarding minimum duration.

Renewal

Except if stipulated otherwise, agreements shall be automatically renewed for periods of time equal to the initial duration (or five years, if shorter).

Maintenance and Repair

Unless the parties agree otherwise, the landlord shall be responsible for performing ordinary and extraordinary maintenance and repair works, as well as works required by mandatory law or by the purpose of the lease. However, common practice is for the tenant to be responsible for ordinary maintenance and repair, as well as for works required by the lease purpose.

Rents

Rents correspond to a periodical payment, and though they may be determined on an annual basis, payment is made in monthly instalments. Unless agreed otherwise, the first rent is due

with the execution of the agreement and the following at the beginning of the month preceding the month to which it refers. The parties may agree on the advance payment of rents corresponding to a period not exceeding two months.

Termination

The parties may freely determine terms for lease termination via break option or objection to renewal. If no express stipulation is made, upon the lapsing of one-third of the initial term, the tenant may terminate it at any time with a 120-day or 60-day prior notice (in case the initial duration, respectively, is equal to or exceeds one year or is lower than one year).

Pre-Emption Right

The tenant is entitled to a legal pre-emption right in case of sale of a premises leased for more than two years.

6.5 Rent Variation

Rent may vary according to pre-negotiated criteria, including any rent exemption periods and/or value adjustment causes or milestones. The parties may also freely establish the intended rent update regime (see **6.6 Determination of New Rent**).

6.6 Determination of New Rent

The most widely used rent update criterion – which applies by default – is the official index determined by the National Statistics Institute as published yearly in the official journal and applying to the following year. This index is based on CPI variation (excluding housing) for the past 12 months up to 31 August. The first rent update is capable of enforcement by the landlord one year from commencement of the lease agreement, and the following successively one year as of the previous adjustment.

It is not uncommon in commercial leases for the parties to establish a rent update criterion purely based on inflation variation (including housing), or other metrics based on predetermined escalating values or a mechanism designed to align the rent with market values (as determined, for example, by experts), though this latter option is more common in long-term leases.

6.7 Payment of VAT

Leasing is a VAT-exempt activity. However, taxpayers are allowed to waive the VAT exemption on lease agreements provided that legally required subjective and objective criteria are met. Property-wise, waiver of VAT exemption is only allowed in the case of lease of urban properties or autonomous units thereof, and where the leased premises have been constructed or subject to major transformation or renovation works. Waiver of VAT exemption on subleases is only permitted regarding industrial properties.

6.8 Costs Payable by a Tenant at the Start of a Lease

The tenant may be required to provide a security deposit to the landlord to secure proper performance of the lease agreement, including unpaid rents and other costs, potential damage to the property, etc. Pursuant to applicable legal provisions, the value of the security deposit cannot exceed the value of two monthly rents.

Security deposits are usually provided as cash collateral or as an autonomous bank guarantee.

6.9 Payment of Maintenance and Repair

The parties may freely determine the rules regarding allocation of certain costs and charges related to the leased premises. By default, the landlord is liable for any charges arising from the management, maintenance and use of the common parts of a building subject to a condo-

minium regime where the premises are located (if applicable), including areas such as parking lots or gardens, as well as of services of common interest (such as cleaning or security).

Without prejudice, as further detailed in **6.4 Typical Terms of a Lease**, the landlord and the tenant may agree that certain maintenance and repair costs are to be fully or partially covered by the tenant.

6.10 Payment of Utilities and Telecommunications

By default, the tenant shall bear all costs relating to the supply of goods and services (including utilities and telecommunications). Typically, these expenses are not included in the rent amount and are paid directly to providers by each tenant individually based on their respective consumption levels.

In multi-tenant spaces, utility costs may be distributed between tenants based on an equal cost-allocation criterion (each tenant paying an equal share regardless), or based on their respective consumption levels (either directly measured, if technically feasible, or estimated based on a determined criterion such as the number of occupants or area).

Some landlords may offer “*all-inclusive*” rent schemes that already comprise utility fees. This is more common in student housing, co-living spaces or short-term rentals.

6.11 Payment of Property Taxes

Pursuant to law, landlords are responsible for payment of property taxes owed in respect of leased properties, although this cost may be contractually allocated to tenants.

Real estate taxes paid by the landlord include Municipal Property Tax (IMI) and Additional Municipal Property Tax (AIMI) – see **8.3 Municipal Taxes**.

6.12 Insurance Issues

The landlord typically bears the cost of property insurance, such as multi-risk insurance covering property destruction and damage, including due to fire, floods, weather events, earthquakes and vandalism. In triple-net leases it is, however, common that the cost of insurance policies is allocated to tenants.

Tenants are responsible for purchasing and maintaining all insurance legally required for the performance of their activity in the premises. Lease agreements may also stipulate that the tenants are required to enter into specific civil liability insurance covering operational risks and potential damages caused to third parties, as well as to their belongings and equipment.

6.13 Restrictions on the Use of Real Estate

Use of real estate by tenants is subject to restrictions arising from mandatory law (such as general notice laws, zoning regulations, etc), as well as from the terms of the respective leases.

The main limitation concerns the prohibition of the tenant from using the property for any purpose other than the one for which it is specifically licensed.

Standard restrictions imposed by landlords concern:

- prohibition from subleasing the premises without prior consent;
- prohibition from performing any structural changes to the property;

- forbidding the pursuit of unlawful or unlicensed activities;
- the need to comply with certain structural limitations of the property; and
- no storage of inflammable/dangerous substances.

Further restrictions may also be imposed by condominium regulations or short-term rental regulations.

6.14 Tenant's Ability to Alter and Improve Real Estate

Generally, tenants are entitled to alter and improve real estate, such improvements reverting to the benefit of the landlord at the end of the lease, it usually being agreed that the tenant is not entitled to any compensation therefor.

Apart the initial fit-out/adaptation works that are usually authorised in the lease agreement, execution by the tenant of other works is subject to the landlord's prior consent.

Pursuant to law, the requirement for landlord's consent may be dismissed if the relevant works are deemed necessary and urgent or if the landlord fails to execute repair or improvement works required by the municipality. In the latter cases, the tenant may be reimbursed for the costs incurred.

Conditions or requirements imposed by landlords usually concern:

- the need for the works to be licensed and compliant with applicable legal and regulatory provisions;
- the need for the works to be executed by specialised professionals, following pre-approved plans;

- prohibiting the performance of structural changes that may impact the property's integrity; and
- the requirement that the property is reinstated to its original status at the end of the lease.

6.15 Specific Regulations

By design, the legal framework provides stronger tenant protections for residential leases, whereas it offers more flexibility for commercial leases. As described in **6.2 Types of Commercial Lease**, there are no subtypes or distinct regulations within the commercial lease category.

Although commercial lease agreements follow a shared framework, the parties fine-tune the respective terms and conditions depending on the specific category of leased asset and their operational requirements and concerns.

COVID-19 legislation addressed asset classes separately, with residential leases benefiting from more extensive protections (including rent moratoriums and suspension of termination by landlords of the foreclosure of mortgages or of eviction processes). Commercial leases also benefited from protection, mainly in respect of suspension of termination by landlords and deferral of rent payments.

6.16 Effect of the Tenant's Insolvency

The tenant's declaration of insolvency does not automatically suspend a lease agreement. However, the insolvency practitioner has the right to terminate the lease with a 60-day prior notice, unless a shorter notice period applies. After the tenant's insolvency declaration, the landlord cannot request termination of the lease based either on non-payment of rent for the period before the insolvency declaration or on grounds of deterioration of the tenant's financial situation.

Portuguese law protects leased premises used by an insolvent debtor for personal and family life; in such a case, the insolvency practitioner is not allowed to terminate the lease, but unpaid rent due 60 days after the declaration of insolvency may be considered a debt of the insolvent estate. In case of eviction due to unpaid rents, the landlord can claim compensation of up to a quarter of the rent.

If there are guarantors under the lease agreement, they are also liable for payment of due rents.

6.17 Right to Occupy After Termination or Expiry of a Lease

The general rule is that upon lease expiry the tenant is required to immediately hand over the premises, unless otherwise resulting from mandatory law or agreed by the parties. This rule is subject to deviations in cases of expiry of the lease other than due to the lapsing of the agreed term; for example, by default in a scenario of termination by the landlord, the tenant benefits from a one-month period within which to hand over the premises, whereas in situations of end of the lease due to expropriation or destruction of the property, the handover can only be claimed after six months.

If the leased premises are not handed over at the expiry of the lease, unless the parties agree differently, the landlord is entitled to a compensation equal to rent value corresponding to the handover delay, this amount being doubled upon the tenant being notified to comply.

6.18 Right to Assign a Leasehold Interest

Assignment and Sublease

As a general rule, the assignment of the tenant's contractual position or total or partial sublease

is subject to the landlord's prior consent. Lease agreements may outline conditions for assignment or subletting, such as ensuring that the assignee/subtenant meets specific financial or operational criteria, or that the property's original use is maintained. Additionally, the original tenant may be required to remain liable for the lease obligations.

In respect of subleases, it should be noted that the tenant may not charge subtenants a rent (proportionally) higher than its own rent increased by 20% without the landlord's consent.

Transfer of Undertaking and Other

The following do not require landlord consent:

- transfer of commercial or industrial undertaking or business as a going concern, although, except if otherwise agreed, the landlord is entitled to a pre-emption right regarding such transfer;
- temporary assignment of a business;
- assignment to an entity that continues to perform in the leased premises the same independent profession/activity.

6.19 Right to Terminate a Lease

The general principle is that any party is entitled to terminate a lease agreement if the counterparty commits a breach that, due to its materiality or consequences, renders the agreement such that it cannot reasonably be requested to the non-defaulting party to maintain it in force.

The NRAU provides a non-exhaustive list of cases of breach that constitute fair grounds for termination of a lease by the landlord, namely non-payment of rents (with a delay of at least three months or four consecutive or non-consecutive delays within a 12-month period in rent payment exceeding eight days), unauthorised

use/sublease by the tenant, unlawful use of the premises, failure to use the property for over one year or breach of health, noise or other regulations.

The tenant is by law entitled to terminate the agreement if the property has a defect or develops one that endangers the life or health of the tenant or if the tenant is deprived of its use, even if only temporarily, for reasons beyond its control.

The parties also retain the possibility of stipulating other specific causes for termination.

6.20 Registration Requirements

Lease agreements must be executed in writing, notarial intervention or other authentication formalities not applying. Leases must be communicated to the tax authorities before the end of the month following their execution, this triggering the landlord's requirement to pay stamp duty amounting to 10% of the value of one month of rent.

Leases of urban properties entered into for an initial term of more than six years are subject to mandatory registration with the LRO in order to be effective vis-à-vis third parties, with tenants bearing the cost of registration unless otherwise agreed.

6.21 Forced Eviction

Landlords may resort to the common courts to seek the early termination of a lease due to breach by the tenant and obtain an eviction order so as to reinstate vacant possession of the premises; this is, however, a lengthy procedure that usually averages between one and two years (depending on the courts' workload and the defence presented by the tenant, par-

ticularly if the materiality of the breach can be challenged).

Alternatively, provided that certain legal requirements are met, landlords may use a special electronic eviction procedure, with a potential timeline of six to eight months.

6.22 Termination by a Third Party

A lease agreement may not be directly terminated by a third party, such as a governmental or municipal authority. However, lease agreements may expire as a result of third-party actions, such as, by way of example, an expropriation of the leased premises which is incompatible with the lease, or an administrative order determining the closure of such premises due to breach of safety regulations.

On a different note, unless agreed otherwise with the property owner, subleases automatically expire in the event of expiration of the underlying head lease.

6.23 Remedies/Damages for Breach

There are no statutory or customary limitations on the damages that a landlord may collect as a consequence of tenant breach and lease termination. In general, in addition to claiming outstanding rents, landlords seek to claim compensation for damage caused by the tenant to the property, as well as for costs incurred due to the eviction process. Landlords may also seek to claim an indemnity for breach of contract, this normally being equal to the value of rents that would be due until the end of the lease term, though courts tend to reduce or dismiss any indemnities payable thereunder on account of the potential lease of the premises to third parties.

For details on security deposits posted by tenants, see **6.8 Costs Payable by a Tenant at the Start of a Lease**.

7. Construction

7.1 Common Structures Used to Price Construction Projects

The most common structures used to price construction prices are the following:

- *Fixed price*: The agreed construction price is deemed as fixed and final, corresponding to all works comprised in the work scope. This fixed price may vary in the event of additional works or the decrease of works comprised within the initial work scope.
- *Price series*: Construction is performed based on a pre-agreed series of unit prices, the project cost corresponding to the total unit prices for each type of work performed considering the amount thereof.
- *Open book pricing*: The project cost is based on the costs of materials and supplies incurred by the contractor, to which a margin, spread or fixed fee value is added as the contractor's consideration.

7.2 Assigning Responsibility for the Design and Construction of a Project

In general, the contractor is liable for all deficiencies and errors arising out of the execution of the works or the quality, shape and dimensions of the applied materials (in cases where the project does not stipulate the rules to be observed, as well as where these are different from the ones approved).

Without prejudice, professional liability applies to the several service providers involved in a construction project, from architects/designers

and engineers to ultimately the contractor itself. This means that the project owner may seek to hold these liable depending on the nature of any deficiency or error and on the party/ies responsible for its design/features and/or incorporation in the project, and such liability may be exclusive to one party or shared by multiple parties.

7.3 Management of Construction Risk

Construction agreements usually regulate the contractor's liability for the project, this including, in addition to a set of representations and warranties (in order to establish the contractor's competence and qualifications), a number of undertakings concerning execution of the works. These undertakings might include, for example, the obligation to put in place adequate insurance policies (such as contractor's all-risk insurance), to safeguard the works and neighbouring properties, to allocate suitable and skilled manpower, to use state-of-the-art construction techniques or to use appropriate equipment, among others.

Construction risk is also managed via progress monitoring by the appointed supervising entity, as well as by coupling payments with the effective verification of such progress, mainly via monthly work certificates and the achievement of pre-agreed milestones.

7.4 Management of Schedule-Related Risk

Construction agreements may stipulate schedule targets such as partial completion or milestone dates, together with delay management mechanisms such that the contractor deploys corrective measures.

In addition, construction agreements usually contain penalty clauses according to which failure to meet certain milestones or the incurring of critical project delays results in monetary pen-

alties that correspond to a predefined percentage of the project cost per each day of delay, this increasing as the delay increases. Typically, these clauses also stipulate that the agreement may be terminated if such penalties reach a certain threshold.

In addition to contractual mechanisms, the supervisory team may be crucial to delay correction by proposing alternative schedules to set the project back on track.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

Security to guarantee a contractor's performance is also achieved by the requirement of contractors to provide suitable collateral. The most common are irrevocable first-demand bank guarantees for a percentage of the project cost; these guarantees should remain in force until the provisional handover, after which the respective value is adjusted downwards until the definitive handover.

Bank guarantees may also be coupled with retentions throughout the execution of the agreement, these representing deductions of predetermined percentages of the value of the monthly payments until a certain value is reached.

7.6 Liens or Encumbrances in the Event of Non-Payment

Contractors are entitled to a lien over the relevant property in respect of the expenses made for the purposes of maintaining or improving it (it is debatable under case law and authorised legal doctrine whether the right of lien is also intended to safeguard payment of the works' cost). To circumvent this potential lien, it is not uncommon for construction agreements to contemplate the possibility of the owner providing suitable collateral (bank guarantee or other) regarding amounts

claimed by the contractor, therefore avoiding the property being retained.

Other encumbrances over the property to the benefit of entities involved in the construction are not typical, without prejudice to potential charges as a consequence of enforcement proceedings whose purpose is to obtain full payment of amounts owed by the owner.

7.7 Requirements Before Use or Inhabitation

Until recently, a project could only be used or inhabited provided that its suitability for the intended purpose was evidenced by a use permit.

Pursuant to the recently enacted Decree-Law 10/2024 of 8 January, which seeks to streamline licensing procedures, after completion of the works it is necessary to submit to the municipality certain documents to conclude the control procedure (the documents vary according to the specifics thereof). However, it is no longer necessary to wait for a decision or confirmation from the municipality to use a property, since the delivery of the required documents and the payment of applicable fees constitute, for all legal purposes, the title that enables its use for the intended purpose.

8. Tax

8.1 VAT and Sales Tax

The sale and purchase of corporate real estate are generally VAT exempt. However, the seller may opt to waive this exemption under specific conditions, such as when both parties are VAT-registered and the property is used for taxable activities. In such cases, VAT is applied at the standard rate of 23% and the buyer is responsi-

ble for accounting for the VAT under the reverse charge mechanism.

While VAT is generally exempt on property transactions, the option to waive this exemption allows for VAT recovery on associated costs, which can be beneficial depending on the specific circumstances of the transaction.

8.2 Mitigation of Tax Liability

Share deals, acquisitions of companies holding real estate through SPVs and mergers, and corporate restructuring are very common ways of optimising the exposure to RETT, stamp duty and CIT.

More recently, an increase in activity by real estate investment funds/companies and SIGIs has been observed, these being particularly suitable for large portfolio transactions.

8.3 Municipal Taxes

Municipal taxes are levied on the occupation of business premises. The main municipal tax related to business premises is the Municipal Property Tax (IMI), an annual tax levied on the taxable value of real estate. Rates vary between 0.3% and 0.45% for urban properties, depending on the municipality. The tax is owed by the property owner.

Small businesses with low taxable income may qualify for temporary IMI exemptions. Certain urban rehabilitation projects may also benefit from IMI exemptions for a period (eg, three to five years). Properties used for non-profit activities or considered of public interest may likewise be exempt.

Additional Municipal Property Tax (AIMI) is applicable to owners that hold properties with a combined tax value exceeding EUR600,000 (married

couples or civil partners who opt for joint taxation benefit from a higher exemption threshold of EUR1.2 million). A 0.7% rate is applicable on the taxable value above EUR600,000 (or EUR1.2 million if jointly taxed), a 1% rate is applicable on the portion exceeding EUR1 million (or EUR2 million if jointly taxed), and a 1.5% rate is applicable on the portion exceeding EUR2 million (or EUR4 million if jointly taxed).

Companies are subject to a single 0.4% rate on all applicable properties (unless used for business, in which case AIMI does not apply). Off-shore entities are subject to a 7.5% rate on all real estate owned in Portugal.

8.4 Income Tax Withholding for Foreign Investors

Non-resident individuals and entities earning income from Portuguese sources are generally subject to withholding tax. The rates can be reduced or eliminated under applicable double taxation agreements between Portugal and the investor's country of residence.

Foreign investors in real estate investment funds/companies and SIGIs are subject to a 10% withholding tax on income, paid by these entities.

8.5 Tax Benefits

There are special RETT, IMI and stamp duty rates and exemptions on the acquisition for housing purposes, resale/rehabilitation and properties classified as historical or cultural.

Special corporate structures are exempt from CIT on certain categories of income. Foreign investors benefit from a lower withholding tax of 10%.

Depreciation is deductible for properties used for business activities. Costs of maintenance and repair, condominium fees, insurance costs and others may be deducted.

There are special tax reductions for individuals renting properties.

Gains earned from the sale of the primary residence may be exempt if reinvested in another home within the EU/EEA or life insurance/retirement plans.

Capital gains tax is only levied on 50% of the gain.

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