



# ICLG

The International Comparative Legal Guide to:

## Real Estate 2016

**11th Edition**

A practical cross-border insight into real estate law

Published by Global Legal Group, with contributions from:

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**GLG Cover Design**

F&F Studio Design

**GLG Cover Image Source**

iStockphoto

**Printed by**

Ashford Colour Press Ltd  
February 2016

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ISBN 978-1-910083-79-6

ISSN 1749-4745

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# Portugal

Vieira de Almeida & Associados

Pedro Ferreirinha



## 1 Real Estate Law

- 1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

The Portuguese Constitution, dated 1976, establishes the right to own private property and to dispose of it during a person's life and upon his or her death, and conditions the requisition or compulsory acquisition of private property for public purposes to the specific cases legally foreseen and to the payment of fair compensation.

The Civil Code, dated 1966, states the general principles for contracts and the discipline of *in rem* rights and regulates condominium rights.

The Land Registry Code (*Código de Registo Predial*), approved by the Decree-Law 224/84, regulates the registration of real estate in the Land Registry.

The Urbanisation and Construction Regime (*Regime Jurídico da Urbanização e Edificação*), approved by the Decree-Law 555/99, regulates the allotment of properties and construction.

The General Rules for Urban Buildings (*Regulamento Geral de Edificações Urbanas*), dated 1951, contains technical rules for construction complementing the Urbanisation and Construction regime.

The horizontal property regime, also regulated by the Civil Code, provides for the segregation of buildings (or groups of buildings that are functionally interconnected) into different and independent units, resulting in a condominium structure where the owner of each unit also co-owns, *pro rata* according to the percentage its unit stands for in the relevant condominium, the common parts of that building.

- 1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?**

Portugal does not have a common law-based system so there is no impact.

- 1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.**

*Lex rei sitae* is the prevailing rule in Portugal in relation to any rights *in rem*. Therefore, real estate matters in Portugal are solely governed by Portuguese law.

## 2 Ownership

- 2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

There are no restrictions on ownership by particular classes of persons.

However, a foreign entity investing in real estate in Portugal must obtain a Portuguese taxpayer number and, if resident outside the EU, appoint a Portuguese tax representative.

## 3 Real Estate Rights

- 3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?**

The main *in rem* rights are ownership (*direito de propriedade*), co-ownership (*compropriedade*), condominium ownership (*propriedade horizontal*), usufruct (*usofruto*), use and housing right (*direito de uso e habitação*), surface right (*direito de superfície*), easements (*servidões*) and statutory pre-emption rights (*direitos legais de preferencia*).

- 3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?**

Yes. The holder of a surface right has the right to build and/or maintain a construction on another person's land.

## 4 System of Registration

- 4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?**

All land should be registered at the Land Registry, except for public domain land.

Certain statutory easements foreseen in specific legislation are also not subject to registration.

#### 4.2 Is there a state guarantee of title? What does it guarantee?

There is no state guarantee of title, however the Land Registry is part of the State and is managed by the State. Its purpose is to publicise information on the legal status of property with a view to assuring that all transactions related thereto are properly and lawfully made. Ancillary to this objective, the law establishes a presumption of existence of any rights registered in the Land Registry.

#### 4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

Any facts/acts resulting in the creation, recognition, acquisition or modification of any rights *in rem* must be registered at the Land Registry. Lack of registry of any relevant fact/act that should be registered significantly affects the level of legal protection *vis-à-vis* third parties, as there is a general principle of priority of the first registered right over any other further incompatible rights (even if established before the registered right).

#### 4.4 What rights in land are not required to be registered?

Statutory easements and statutory pre-emptive rights and restraints on disposal do not need to be registered.

#### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

This is not applicable as all land must be registered.

#### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

The transfer of real estate ownership to the buyer occurs with the execution of a public deed of transfer. However, such ownership right shall only become fully effective (i.e. opposable to third parties) after it is registered in the Land Register.

#### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

The Portuguese Land Register system is based on a general principle of priority of the first registered right over any further incompatible rights (even if such rights were established before the registered right).

## 5 The Registry / Registries

#### 5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

There are two State departments where land is registered – the Land Registry and the Tax Division (Ministry of Treasury) – both

serving different purposes. Whilst the Land Registry publicises the creation, recognition, acquisition or modification of any rights *in rem* over a property, registration at the Tax Division is mainly directed at keeping an updated physical description of the property and its corresponding tax value along with the identification of the owner responsible for paying the taxes levied on the property.

#### 5.2 Does the land registry issue a physical title document to the owners of registered real estate?

No, but it issues a Land Registry Certificate proving ownership over the relevant property.

#### 5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

Real estate-related transactions cannot be completed electronically. Any transactions resulting in the creation, recognition, acquisition or modification of any rights *in rem* over a property must be executed in a deed executed before a notary, or in a private document signed before, and certified by, a lawyer, solicitor, chamber of commerce and industry or registry office, and then electronically filed at the Land Registry, and based on a certified copy of the transfer deed.

Information on ownership, and on any other facts or rights registered over a property, can be accessed electronically using an access code provided by the Land Registry.

#### 5.4 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Compensation from registry can be claimed on the basis of the general framework of public entities liability.

#### 5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

Land Registry information is public and there are no specific restrictions in accessing it.

A buyer may obtain the information he might reasonably need to complete a transaction as the information provided by the Land Registry covers all registered liens and encumbrances that might prevail over his acquisition. However, legal easements and leases for a term of less than six years are not subject to mandatory registration and therefore do not show up in the Land Registry information.

## 6 Real Estate Market

#### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

On standard transactions normally one would see legal advisors and real estate brokers involved.

In institutional investment and divestment deals, besides those referred to above, it is also usual to have tax advisors and technical



and environmental teams (when required). These are usually in charge of conducting due diligence in their area of expertise whilst legal counsel, besides the legal due diligence, are usually in charge of drafting and negotiating all contractual arrangements of the transaction.

Notaries or other officials invested with similar powers are also involved as real estate transactions must be executed in a deed executed before a notary, or in a private document signed before, and certified by, a lawyer, solicitor, representative from the Chamber of Commerce and Industry or registry office.

## 6.2 How and on what basis are these persons remunerated?

Brokers are remunerated by a lump sum corresponding to a percentage of the transaction price, whilst legal and tax advisors are normally remunerated on the basis of hourly rates, and other consultants on a man/work ratio.

In general, notaries establish their fees freely. There are some acts, however, that have an official fixed price.

## 6.3 Do you feel there is a noticeable increase in the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

The significant financial liquidity in international markets and the high prices of property in traditional investment markets, along with Portugal's positive image in the eyes of international investors, have contributed to a significant increase in foreign investment in the Portuguese real estate market, and we have been witnessing some major international players entering the market with the acquisitions of significant retail portfolios, stand-alone retail and hospitality projects and sale & lease back transactions, etc.

Keeping up with this positive cycle, banks, equity investors and other sponsors have increasingly become available to finance real estate acquisitions and development, although now based on more conservative LTVs.

## 6.4 What is the appetite for investors and developers in your region to look beyond primary real estate markets and transact business in secondary or even tertiary markets? Please give examples of significant secondary or tertiary real estate transactions, if relevant.

There is still low interest in secondary and tertiary local markets in Portugal.

## 6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

Residential, high end retail and hospitality subsectors, especially in Portugal's main city centres, are performing better than other subsectors. The point to highlight, however, is that investors and developers are clearly more focused on rehabilitation investments that have a shorter time to market and benefit from the competitive incentives scheme that Portugal has in place for property rehabilitation. These include a specific "low cost" rehabilitation scheme designed to make rehabilitation in historical areas viable

(waiving some of the technical requirements that otherwise would be mandatory) and stimulate the lease market, along with a tax incentive scheme that includes a reduced VAT tax on the construction works, and exemptions of IMT (property transfer tax) and IMI (Annual Property Tax) applicable on designated cases.

## 7 Liabilities of Buyers and Sellers in Real Estate Transactions

### 7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

The minimum formalities for the sale and purchase of real estate are:

- Transactions often start with a promissory purchase & sale agreement (optional) whereby the parties agree on the conditions applicable to the relevant transaction.
- Payment of the property transfer tax.
- Execution of the sale and purchase deed before a notary, or in a private document signed before, and certified by, a lawyer, solicitor, or representative from the Chamber of Commerce and Industry or registry office.
- Registration of the transaction at the Land Registry.

### 7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

There is no specific legal provision in this regard but, according to the general provisions of law, the seller must act in accordance with the principles of good faith. This means that the seller should disclose any information of essence for a reasonable buyer to decide to purchase the property, such as any legal or material defects and, in general, any issues that have a material impact on the use and/or value of the property.

### 7.3 Can the seller be liable to the buyer for misrepresentation?

Yes, in case of an infringement of the seller's representations and warranties and if, as a result, the buyer suffers loss. It is, however, usual for the seller to negotiate to (i) cap the liability at a certain amount (e.g. the sale price), and/or (ii) limit the survival of its liability to a set amount of time.

### 7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

According to Portuguese law, and unless the parties agree otherwise, the seller is liable for defects and for the lack of qualities it has warranted to the buyer, or that are necessary for the purpose for which the property is intended, during the five-year period following the relevant sale.

Additionally, it is also common for the seller to give contractual warranties to the buyer. Such warranties are usually designed to apportion risks between the parties relating to title, encumbrances, licensing status, tax issues, hidden defects, and environmental aspects, among others. These warranties should not be a substitute for the buyer's own due diligence designed to check the technical, physical, commercial, legal, urban environmental and fiscal status

of the target property, as warranty claims have ultimately to be decided in court, with the inherent costs and time involved.

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**7.5 Does the seller warrant its ownership in any way? Please give details.**

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The seller's ownership right must be registered in the Land Registry. Any notary witnessing and executing a transaction over such right has to verify and confirm in the relevant deed that the ownership is registered in the name of the seller (as well as to identify any registered liens or encumbrances over the relevant property). The absence of an ownership right registration in favour of a selling party prevents the notary from executing any deed in relation thereto.

Nevertheless, it is usual for the buyer to warrant that he is the sole owner and holder of the relevant property being sold and that there are no pending registrations in relation thereto.

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**7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?**

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The buyer is normally also liable to pay all transaction-related costs, such as the Municipal Property Transfer Tax, the Stamp Duty and the notary and registry fees.

## 8 Finance and Banking

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**8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?**

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Lending of money is mainly ruled by the Civil Code and the Banking Law (*Regime Geral das Instituições de Crédito* (regulating banking activity)). Portuguese regulations do not differ between residents and non-residents.

Certain consumer protection laws are also applicable to loans, including those to finance the acquisition of certain types of real estate.

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**8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?**

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Financing property acquisition usually involves the creation of a mortgage for the benefit of the lender. If the property is an income, asset assignment of rents or receivables (including insurance and indemnities) may also apply.

In addition, loan agreements usually contain financial covenants (e.g. loan to value, debt service cover) and non-financial covenants (e.g. disposal limitations and obligation to maintain the property in a good state of repair or to protect the lender's rights).

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**8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?**

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A mortgagee does not have the right to take possession of a property in the event of default in payment of the secured obligation. Mortgage enforcement is only made through courts, under a specific

proceeding, whereby the court shall promote the sale of the relevant property and the mortgagor shall be paid from the proceeds resulting therefrom (after payment of other privileged credits, if any).

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**8.4 What minimum formalities are required for real estate lending?**

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Loans are formalised in a private contract entered into between the parties.

Mortgages are formalised in a notarial deed executed before a public notary or in a private document signed before, and certified by, a lawyer, solicitor, or representative from the Chamber of Commerce and Industry or registry office.

Mortgages must also be registered in the Land Registry in order to be valid and effective towards third parties.

The pledge over shares must comply with the formalities set forth in the Portuguese Securities Code (*Código de Valores Mobiliários*), which vary depending on whether the shares are book-entry shares or represented by certificates.

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**8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?**

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The protection of the lender depends on the priority in ranking of the security package. A lender secured by a mortgage is entitled to be paid with preference over other borrowers' creditors without any special privilege from the proceeds resulting therefrom (even in the scenario of the insolvency of the borrower). The proceeds will be distributed to the security holders in the order of their ranking in the Land Registry.

## 9 Tax

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**9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?**

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Transfers of real estate are subject to Property Transfer (IMT) payable by the buyer and assessed on the purchase price or its tax value, whichever is higher.

Property Transfer Tax rates are currently: (i) residential properties: between 0% and 6%; (ii) other urban properties: 6.5%; (iii) rural properties: 5%; and (iv) properties purchased by an entity with residence in a tax haven (as listed under Ministerial Order no. 150/2004, dated 13 February, as amended by Ministerial Order no. 292/2011, dated 8 November): 10%.

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**9.2 When is the transfer tax paid?**

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As a rule, transfer tax is paid immediately before the relevant transaction.

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**9.3 Are transfers of real estate by individuals subject to income tax?**

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Fifty percent of the capital gains arising from the sale of real estate by residents in Portugal is added to the individual's personal income (unless the property was acquired before 1989) and taxed accordingly.

The gain may be wholly or partially exempt if the property is the taxpayer's primary residence and the sale proceeds are reinvested

in the acquisition, improvement or construction of another primary residence, in Portugal or within the European Union, within 36 months of the sale or in the 24-month period prior to the relevant sale.

Capital gains obtained by non-resident individuals are, as a rule, subject to taxation at a flat rate of 28%. Such capital gains may be excluded from taxation in Portugal if a double taxation agreement applies.

#### 9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

As a rule, transfers of real estate deals are exempt from VAT, although the seller may waive this exemption if certain conditions are met.

Whenever applicable, the current VAT rate is 23% of the purchase price or its registered tax value, whichever is higher; Stamp Duty shall not be due. Normally VAT is self-assessed by the buyer which means that in practice no amount is actually paid.

#### 9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

There are no additional taxes payable by an individual on the disposal of property.

#### 9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Yes, the purchase of properties by means of share deals is not subject to Property Transfer Tax (IMT) or Stamp Duty, except in the case that the purchase involves an interest of 75% or more in a Limited Liability Company owning real estate.

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

The urban lease framework (either for business or residential leases) is mainly comprised in the Portuguese “Urban Lease Law” and in the Portuguese Civil Code.

Commercial leases are qualified as non-residential leases, which apply to all leases for non-residential purposes.

### 10.2 What types of business lease exist?

All business leases are qualified as non-residential leases under Portuguese law, which only recognises residential or non-residential leases.

### 10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

- (a) **Length of term:** Parties may agree on the duration of the lease as well as on the regime applicable to termination rights/break options and opposition to the renewal.

Standard business leases are generally entered into for an initial period of between five and 10 years.

- (b) **Rent increases:** Rent is updated according to the criteria agreed and established by the parties in the lease agreement or, in the absence of a specific contractual provision, on an annual basis according to the official criteria (Price Consumer Index).
- (c) **Tenant's right to sell or sub-lease:** The transfer of the tenant's contractual position and the sublease are subject to the prior consent of the landlord (except in case of transfer of a commercial business, which entails, by virtue of law, the automatic transfer of the relevant lease agreement). Unless otherwise agreed, the landlord has a pre-emption right in this transfer.
- (d) **Insurance:** Typically the landlord is required to contract a multi-risk insurance for the property (although the cost of this insurance is often passed through to the tenant). The tenant is normally required to contract insurances regarding its business (liability insurance) and its contents in the property.
- (e) (i) **Change of control of the tenant:** Change of control provisions are not common unless the control/ownership of the tenant is an important element in the landlord's decision to lease the property (e.g. if the tenant is a mere subsidiary of a large group).
- (ii) **Transfer of lease as a result of a corporate restructuring (e.g. merger):** Normally leases do not include provisions dealing with this matter, which means that the lease is automatically transferred as a result of a merger or a demerger.
- (f) **Repairs:** The parties may agree on the rules applicable to any maintenance of and works on the leased property. Typically the landlord is responsible for structural and major repairs, and interior repairs are the responsibility of the tenant.

### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Leases are subject to stamp duty (payable by the landlord) at a rate of 10% of the first rent (except if VAT applies).

As a rule, the rent is exempt from VAT in commercial leases, although the landlord may waive this exemption provided that certain conditions are met. The current rate of VAT is 23%.

The landlord also pays income tax/corporation tax on rental income.

### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

Business leases normally terminate at the end of the term although they can also be terminated for other reasons, mainly as a result of the mutual consent of the parties or a contractual breach by one of the parties.

Tenants usually negotiate a break option/termination right at one or more points through the term of the lease in exchange for payment of a compensation/termination fee.

Although not representative of market practice, there are leases where the tenant has an option to extend the lease.

### 10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

Transfer of ownership of the leased property entails the automatic

assignment of the landlord's contractual position on the lease to the buyer. With this assignment the new owner/landlord acquires not only the rights but also the obligations of the former owner/landlord. However, in case of a pre-sale non-compliance, the former owner might be liable towards the new owner.

As a rule, and unless otherwise agreed, the tenant will remain liable only in relation to obligations prior to the assignment.

**10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the “environmental footprint” of a building. Please briefly describe any “green obligations” commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).**

Portuguese law imposes on the landlord the obligation to obtain and deliver to the tenant with the signature of the lease agreement an energy and air quality certificate relating to the property. Apart from this obligation, provisions providing for compliance with established “green” standards are not yet common practice in the lease market.

## 11 Public Law Permits and Obligations

**11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.**

The main laws governing zoning and related matters are:

- The General Framework of Soils Policy, Zoning and Urbanism (*Bases Gerais da Política de Solos, de Ordenamento e Urbanismo*) – dictating the framework for the different sub-levels of zoning and planning laws and regulations.
- The Planning Act (*Regime Jurídico dos Instrumentos de Gestão Territorial*) – defining the scope and the procedure for approving and modifying the different levels (national, regional and municipal) of zoning plans.
- Local Planning Instruments (*Instrumentos de Planeamento Locais*) – the municipal plans regulating the use and occupation of the soil included in the area of jurisdiction.
- Environmental Impact Assessment Act (*Lei da Avaliação de Impacto Ambiental*) – regulating the procedure of environmental impact assessment.

**11.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.**

Compulsory acquisition (expropriation) of private property is admitted when necessary for justified public purposes. Any compulsory acquisition must be preceded by an attempt to acquire the envisaged land by mutual agreement.

If an agreement is not achieved, the expropriation process shall start by the issuance of a public interest declaration (DUP) justifying the acquisition decision.

Within a period of 15 days counting from such declaration being issued, the expropriating entity shall submit a proposal of compensation to the owner that should consider the damages suffered by the latter and reflect the property's market value according to its regular economic use.

**11.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?**

Building use and occupation permits are issued and controlled by the municipalities with jurisdiction over the territory where the relevant property is located.

Environmental regulations are also enforced by national specialised agencies such as the Agência Portuguesa do Ambiente (APA).

Information on the requirements to obtain licences is in general available on the municipalities' website, as well as on governmental websites.

**11.4 What main permits or licences are required for building works and/or the use of real estate?**

Construction works and use of buildings are controlled by the municipalities. Depending on the works to be carried out, the execution may be conditional upon (i) obtaining a construction permit, or (ii) informing the municipality of its commencement (generally applicable to interior works and/or works that do not change the façade, height or structure of the relevant building).

The municipalities also control the use permits that confirm that a certain construction project has been executed in accordance with the approved plans and drawings and/or that the building is fit for the exercise of certain activities.

**11.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?**

Yes. The municipality with territorial jurisdiction over the territory where the real estate is located issues the relevant permits and licences regarding its construction and use; such permits and licences will be granted if the real estate has been built in accordance with the approved plans.

There is no possibility to obtain implied permission, except in very specific cases.

**11.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?**

The cost of construction and use licences is determined by applying formulas established in each municipality's regulations.

The timing involved in obtaining a building permit depends on the complexity of the works involved. A use permit – a document that confirms that the relevant works have been executed in accordance with the approved plans – should be obtained within 10 days of a request being filed together with a pre-defined set of documents including statements from the developer's architect and engineer confirming that the works are in accordance with the applicable laws, building regulations and approved plans and have been executed accordingly.

**11.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate?**

Yes. Legislation on historic areas, monuments and historic or classified buildings exists and condition development projects of



surrounding areas or of the properties classified as such. Additionally Municipalities and the National Heritage Agency (*Direcção Geral do Património*) have a pre-emption right in the transfer of any classified buildings or located within certain historical areas.

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### 11.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

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In Portugal there is no public register of contaminated land. Therefore, a potential buyer may only obtain reliable information on contamination and pollution of land by means of an environmental assessment.

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### 11.9 In what circumstances (if any) is environmental clean-up ever mandatory?

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According to the legal framework on environmental liability with regard to the prevention and remedying of environmental damage (which transposes Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004), the operator causing an imminent or an effective environmental damage, namely to the soil or water, is responsible for adopting the necessary measures for its prevention or remediation, including clean-up measures.

Furthermore, under the general rules of environmental legislation, whenever the environmental liability regime does not apply, there is an obligation to remediate the environment and restore it to its previous state in case of pollution events or any type of damage to the environment.

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### 11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

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Generally, the transfer or lease of real estate is subject to previous energy-efficiency certification of the transferred property, which is carried out by certified technicians and registered with an association specifically dedicated to the energy sector.

## 12 Climate Change

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### 12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

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Within the scope of the United Nations Framework Convention on Climate Change (UNFCCC) and of the Kyoto Protocol, Portugal has adopted the following instruments in order to promote the reduction of greenhouse gas emissions (GHG), including of carbon dioxide (CO<sub>2</sub>):

- (i) the Green Growth Commitment (CCV), aiming at establishing a development model for Portugal based on sustainability;
- (ii) the Strategic Framework for the Climate Policy (QEPiC), establishing the goals for Portuguese policy on climate change up until 2030;
- (iii) the national Emissions Trading framework, in the context of the European Emissions Trading Scheme (EU-ETS), determining the obligation for operators of certain sectors to hold greenhouse gas emission allowances;

- (iv) the National Program for Climate Change (PNAC 2020/2030), establishing policies, measures and instruments mainly focused on the limitation of GHG in those sectors not covered by the EU-ETS;
- (v) the National Strategy of Adjustment to Climate Change (ENAAAC 2020), establishing the goals, activities and functioning model of the Portuguese strategy on climate change up until 2020;
- (vi) the Portuguese Carbon Fund;
- (vii) the National Action Plan for Renewable Energies (PNAER), establishing the goals regarding the share of Portuguese energy sourced from renewable sources for energy consumption up until 2020; and
- (viii) the National Action Plan for Energy Efficiency (PNAEE), establishing the Portuguese goals regarding energy efficiency.

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### 12.2 Are there any national greenhouse gas emissions reduction targets?

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According to the Climate & Energy Package 2020, for the period 2013-2020 Portugal must limit the increase of greenhouse gas emissions (GHG) for the sectors not included in the EU Emissions Trading Scheme to 1% in relation to 2005, having adopted a new goal of 31% regarding renewable energies in the raw final consumption of energy, of which 10% is allocated to transport. A general goal to reduce the consumption of primary energy by 25% and a specific goal for the Public Administration of a reduction of 30% have also been adopted.

Portugal approved the Green Growth Commitment (CCV), imposing certain goals to be achieved by 2020 and 2030. For 2030, the main goals are the following: (i) to reduce GHG emissions by between 30% and 40% (52.7-61.5 MtCO<sub>2</sub>e) compared to 2005; (ii) to increase the share of renewable energies in the final consumption of energy to 40%; and (iii) to increase energy efficiency through a reduction of 30% over the energy baseline by 2030, translated into an energetic intensity of 101 tep/M€ GDP.

The Strategic Framework for the Climate Policy (QEPiC) determines that Portugal shall reduce its GHG emissions to values of -18% to -23% by 2020, and -30% to -40% by 2030, in relation to 2005, depending on the results of European negotiations.

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### 12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

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Portugal has implemented an Energetic Certification System for buildings (designed for housing or commercial purposes), with the purpose of improving the energy efficiency performance of buildings and imposing mandatory energy certificates.

Moreover, through the EU 2020 funding program, Portugal approved an Operational Program of Sustainability and Efficiency in the Use of Resources (POSEUR), focused, among other issues, on available funding in order to achieve the goal to increase energy efficiency in the housing sector and to reduce the annual estimated GHG emissions, limiting, by 2023, the value of GHG emissions to 80.640T CO<sub>2</sub>e.



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Pedro Ferreirinha joined Vieira de Almeida & Associados (VdA) in 1992 and is the head of the real estate practice. He has broad real estate experience as a result of assisting clients in Portugal and abroad (in particular in Angola) in the acquisition and disposal of residential, commercial, hospitality and retail property portfolios, in negotiating leasing for tenants and landlords, as well as in sale and leaseback transactions.

He also assists investors throughout the Portuguese planning and zoning land use and licensing procedures, and with the structuring and setting up of investment vehicles and their financing.

He lectures in real estate law and the postgraduate course in real estate management at the Instituto Superior de Economia e Gestão in Lisbon.



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VdA has offices in Lisbon and Porto and through its network of law firms VdAtlas, it extends its legal capabilities to other Portuguese-speaking countries and Francophone Africa.

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