
THE REAL ESTATE LAW REVIEW

FIFTH EDITION

EDITOR
JOHN NEVIN

LAW BUSINESS RESEARCH

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Fifth Edition

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CONTENTS

Editor's Prefacevii
	<i>John Nevin</i>
Chapter 1	AUSTRIA 1
	<i>Peter Oberlechner</i>
Chapter 2	BELGIUM..... 14
	<i>Yves Delacroix and Alexandre Emond</i>
Chapter 3	BOSNIA & HERZEGOVINA..... 28
	<i>Muamer Suljić and Ana Terzić</i>
Chapter 4	BRAZIL 38
	<i>Marcelo José Lomba Valença and Tamiris Micheletti Britzki</i>
Chapter 5	CAMBODIA 49
	<i>Sophealeak Ing</i>
Chapter 6	CAYMAN ISLANDS..... 61
	<i>George Loutas</i>
Chapter 7	CHINA..... 70
	<i>Alex Wang and Edward Hsu</i>
Chapter 8	CROATIA..... 83
	<i>Ana-Marija Skoko</i>
Chapter 9	CYPRUS 95
	<i>Nicolas Th Papaconstantinou</i>

Chapter 10	DENMARK.....	108
	<i>Torben Mauritzen</i>	
Chapter 11	ENGLAND & WALES	120
	<i>John Nevin</i>	
Chapter 12	FRANCE	135
	<i>Pierre Gebarowski and Guillaume Rossignol</i>	
Chapter 13	GERMANY	150
	<i>Ingo Klöcker</i>	
Chapter 14	GREECE	161
	<i>Nikos A Voubiounis and Christina C Zakopoulou</i>	
Chapter 15	INDONESIA.....	174
	<i>Luky I Walalangi, Miriam Andreta, Fiesta Victoria and T Anggra Syah Reza</i>	
Chapter 16	ITALY	185
	<i>Alessandro Balp</i>	
Chapter 17	JAPAN	197
	<i>Norio Maeda, Naoko Katakami, Yasuo Asami and Toshiyuki Yamamoto</i>	
Chapter 18	JERSEY	211
	<i>Christopher Philpott and Will Whitehead</i>	
Chapter 19	KOREA.....	223
	<i>Kyung Don Lee, Robert C Young and Thak-Hwan Kim</i>	
Chapter 20	MEXICO	242
	<i>Enrique Iglesias Elizondo, José G Pozas de la Vega and David Páez Gonzalez</i>	

Chapter 21	MONTENEGRO..... 252 <i>Mihajlo Matković</i>
Chapter 22	NETHERLANDS 262 <i>Annemieke Wessels, Maarten Tinnemans and Max van Drunen</i>
Chapter 23	NIGERIA..... 274 <i>Gbolahan Elias, Lynda Chinweokwu and Pelumi Asiwaju</i>
Chapter 24	NORWAY 282 <i>Thorvald Nyquist</i>
Chapter 25	POLAND 293 <i>Janusz Siekański and Radosław Waszkiewicz</i>
Chapter 26	PORTUGAL..... 304 <i>Pedro Ferreirinha</i>
Chapter 27	QATAR..... 316 <i>Seem Maleh</i>
Chapter 28	RUSSIA..... 329 <i>Sergey Kolobov and Margarita Slavina</i>
Chapter 29	SERBIA..... 340 <i>Marija Marošan and Đorđe Popović</i>
Chapter 30	SINGAPORE 349 <i>Jennifer Chia, Priscilla Lim and Alicea Tan</i>
Chapter 31	SLOVAKIA 367 <i>Tomáš Zárecký and Laura Ogurčáková</i>
Chapter 32	SLOVENIA..... 383 <i>Uroš Bogša, Mojca Fakin and Saša Sodja</i>

Chapter 33	SPAIN.....	393
	<i>Diego Armero and Rodrigo Peruyero</i>	
Chapter 34	SWITZERLAND	404
	<i>Cécile Berger Meyer and Andreas Rötheli</i>	
Chapter 35	TAIWAN	416
	<i>Yi-Jiun Su and Yi-Li Kuo</i>	
Chapter 36	TURKEY	428
	<i>Barlas Balçioğlu and Ali Can Gören</i>	
Chapter 37	UNITED ARAB EMIRATES.....	439
	<i>Ibrahim Elsadig and Joe Carroll</i>	
Chapter 38	UNITED STATES	451
	<i>Meredith J Kane</i>	
Appendix 1	ABOUT THE AUTHORS.....	467
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ..	487

EDITOR'S PREFACE

I am honoured to have been invited to take over from David Waterfield as editor of *The Real Estate Law Review* and I would like to take this opportunity to personally thank David for his invaluable help and support over the years and, on behalf of *The Real Estate Law Review*, for his vital role in its success since the first edition back in 2012.

Building on the success of the previous editions of the *Review*, the fifth edition now extends to some 38 jurisdictions, and we are delighted to welcome new contributors from important jurisdictions around the world. Each contributor is a distinguished legal practitioner in his or her jurisdiction with an in-depth understanding of both his or her own domestic market and the wider global real estate market. Each chapter offers an essential guide to real estate practice in the relevant jurisdiction together with an invaluable focus on market activity, important legal and practical developments over the preceding 12 months and the outlook for 2016. Together, the chapters offer real estate practitioners and their clients an immediate and accessible overview of international real estate.

Real estate is a truly global industry and it is no longer possible to look at domestic markets in isolation. It has become essential to develop an understanding of the needs and expectations of overseas investors, and of how domestic markets are affected by legal, economic, political and social events and trends throughout the world. International economic and political instability continue to have a significant effect on the international real estate market and this is reflected in investors' pursuit of value and security. The United Kingdom (and London in particular) continues to be seen as a safe haven for capital from around the world, and the outlook here remains buoyant in both the commercial and residential sectors.

I wish to express my gratitude to all the distinguished practitioners from across the globe who have contributed to this fifth edition, and thereby to the continued

success of *The Real Estate Law Review*. I would also like to take this opportunity to thank Gideon Robertson and his team for their sterling efforts in coordinating the contributions and compiling this edition.

John Nevin

Slaughter and May

London

February 2016

Chapter 26

PORTUGAL

*Pedro Ferreirinha*¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

Ownership is the most common title to real estate in Portugal. Based on Roman law and French Civil Code concepts, ownership is equivalent to the common law concept of freehold, and comprises the absolute and exclusive rights to use, transfer and encumber real estate.²

The right to own private property, and the right to dispose of it during a person's life and upon his or her death, are foreseen in Article 62 of the Portuguese Constitution, which also conditions the requisition or compulsory acquisition of private property for public purposes to those specific cases foreseen by law and on the payment of fair compensation. Property can be held individually or by more than one person or entity (co-ownership).

The horizontal property regime 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 each unit can be owned by a different entity or individual. In a building divided under this regime, each individual or entity owns a unit and co-owns, *pro rata* and to the percentage the space such a unit takes up in the condominium, the common parts (lifts, stairs, etc.) of the relevant building. These two rights cannot be transferred separately.

Fiduciary ownership is not allowed under the Portuguese system, except in the Free Zone of Madeira, where it is legally permitted to incorporate a trust.

Portuguese law also recognises other types of *in rem* rights derived from property, such as surface rights and usufruct (i.e., the right to the use and enjoyment of the fruits

1 Pedro Ferreirinha is a partner at Vieira de Almeida & Associados, RL.

2 Article 1305 of the Portuguese Civil Code.

or profits of another person's property without fundamentally changing its substance). Surface rights entitle holders to build or maintain a construction, perpetually or temporarily, on or below another person's property.

ii System of registration

Any facts or acts resulting in the creation, recognition, acquisition or modification of any rights *in rem* must be registered at the Land Registry.

To be effective in relation to third parties, real estate transfers must be executed in a transfer deed 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 filed at the Land Registry.

The Land Registry is part of the state, and provides a record of the existence and scope of *in rem* rights over real estate. The Land Registry is publicly accessible and information on title charges or encumbrances over specific properties at any time can be obtained here.

Land Registry certificates provide details of the legal status of properties regarding, *inter alia*, the owners, existing mortgages, encumbrances or agreed easements or restrictions, being therefore key documents in any due diligence exercise. Failure to register any relevant fact that should be registered will significantly affect the level of legal protection in relation to third parties, as there is 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).

iii Choice of law

Lex rei sitae is the prevailing rule in Portugal in relation to any rights *in rem*; Portuguese law therefore applies to the creation, recognition, acquisition or modifications of any rights over real estate located in Portugal. The transfer of real estate located in Portugal is therefore compulsorily ruled by Portuguese law.

Parties, however, may choose the law applicable to their contractual relation for indirect acquisitions of real estate (share deals), provided that the selected law has a relevant connection with the parties involved in the transaction, and any mandatory formal requirements for the transfer of the relevant shares (or other form of equity representation) are observed.

II OVERVIEW OF REAL ESTATE ACTIVITY

The positive outlook for the Portuguese economy for 2016 has had a significant impact on real estate activity, considering that 2015 was already a record-breaking year for such activity.

The existence of significant financial liquidity in international markets and the good quality-to-price ratio of Portuguese property have caught the attention of international players, who have entered the market with the acquisition of significant retail portfolios, stand-alone retail, hospitality projects and sale and leaseback transactions, leading to a historic activity peak of real estate commercial investments in October of 2015 (€1 billion in the first 10 months of the year, 90 per cent of which was from international

investors), with a 300 per cent increase on the average transaction value when compared with the average of the past 10 years, and an expected overall investment for 2015 of €2 billion.

Recent market studies also indicate that the real estate financing market is beginning to show good signs of recovery, with the banks, equity investors and other sponsors increasingly becoming more available to finance real estate acquisitions and developments, although now on the basis of more conservative loan-to-value ratios.

Alongside this positive economic evolution, a combination of public policies and legislation specifically aimed at controlling the increase in the amount of new construction, promoting the rehabilitation of city centres and attracting foreign investment has confirmed the boost of the real Portuguese real estate market that was triggered in the last quarter of 2013.

While the golden residence permit programme (attracting foreign investment of around €1,350 million in real estate in Portugal up to September 2015), the non-habitual resident tax regime (NHR), a revised lease law and a competitive tax incentives scheme for rehabilitation have played a significant role in the residential market, the increasing attraction of Portugal as a tourist destination has also had a big impact on the high-street retail market and in the hospitality industry, making these sectors a clear target for international investors looking for good returns.

Overall, the evolution of the Portuguese economy, which presents progressively smaller risks for investors, combined with high-quality real estate properties at very competitive prices and considerable profitability, particularly regarding prime products, continues to capture the interest of foreign investors and provide positive indications for 2016.

III FOREIGN INVESTMENT

There are no restrictions on foreign investment in real estate in Portugal. On the contrary, several measures (including legal regimes) have been created in the past few years to establish an attractive market for foreign investors.

One measure implemented during the past three years to attract foreign investment is the above-mentioned golden residence permit programme, which allows non-EU citizens to qualify for a residence permit if they carry out one of the investments set out under the law (including acquiring and maintaining property in Portugal amounting to €500,000 or more for at least five years, or to €350,000 if the investment is directed at 30 year-old buildings or to buildings located in urban rehabilitation areas, along with the corresponding rehabilitation works). Another measure worth noting, although not specifically designed for foreign investors, is the regime applicable to investments that qualify as projects of national interest (PIN): that is, projects that are in accord with pre-established criteria (i.e., they have an overall investment of at least €25 million, create at least 50 direct jobs and are submitted by recognised, credible promoters) and that are deemed to have a significant impact on the country's economy. Projects that qualify as PINs are monitored by a dedicated team comprising the promoter, central and local authorities that is focused on expediting all the administrative procedures necessary for the implementation of the relevant project.

Any foreign entity seeking to invest in real estate in Portugal must comply with certain specific formalities such as obtaining a Portuguese taxpayer number and, if resident outside the EU, appointing a Portuguese tax representative.

It should be noted that foreign entities resident in tax havens³ that purchase property in Portugal must pay a property transfer tax (IMT) that is assessed on the basis of a rate of 10 per cent.

IV STRUCTURING THE INVESTMENT

Real estate investments can be structured according to the specific needs and goals of each investor.

In broad terms, investors usually structure investments either by purchasing the envisaged property directly (asset deal), or indirectly through the purchase of the shares in a Portuguese company that owns property (share deal).

i Asset deals

As previously mentioned, asset deals must be executed in writing (by means of a transfer deed before a notary, or in a private document before a lawyer, solicitor, chamber of commerce and industry or registry office) and subsequently registered in the Land Registry.

Depending on the property to be conveyed, specific documents and formalities are required for the transfer (e.g., use permit, energy and air quality certificate, notices for the exercise of certain legal pre-emption rights).

It is standard practice for purchasers to conduct a due diligence procedure regarding the technical, physical, commercial, legal, urban, environmental and fiscal status of any property they envisage buying. It is also standard practice for the parties to negotiate and exchange preliminary agreements, including letters of intent, memoranda of understanding and heads of terms, which can either be binding or non-binding depending on what is deemed necessary for the relevant situation.

If the parties want to immediately commit to a binding document, they usually sign a promissory purchase and sale agreement, in which case the signing of the definitive sale agreement is usually conditional upon the parties meeting certain agreed obligations, fulfilling certain agreed requirements or conditions, or both.

Asset deals are subject to IMT and stamp duty; both are payable by the purchaser prior to the transaction, and are assessed on the higher of the purchase price or its tax value. Currently, the stamp tax rate is 0.8 per cent, while IMT rates apply as follows:⁴

- a* residential properties: between zero and 6 per cent;
- b* other urban properties: 6.5 per cent;
- c* rural properties: 5 per cent; and
- d* properties purchased by an entity resident in a tax haven:⁵ 10 per cent.

3 Listed under Ministerial Order No. 150/2004, dated 13 February, as amended by Ministerial Order No. 292/2011, dated 8 November.

4 IMT Code, Article 17.

5 See footnote 3.

As a rule, asset 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 per cent on the higher of either the purchase price or its registered tax value, and stamp duty is due. VAT is self-assessed by the purchaser, which means that in practice no amount is actually paid.

Notary and registration fees are also payable by the purchaser, but their amount is not significant (approximately €1,200, plus €75 for each separate unit in cases where the relevant real estate is a building under the horizontal property regime).

ii Share deals

The purchase of equity stakes in investment vehicles is formalised in a private sale contract and is not subject to any specific formal requirements, except those applicable to the transfer of quotas in a limited liability company (Lda), which must be executed in writing and filed and registered at the Commercial Registry.

Depending on the investment vehicle, specific documents must be secured and requirements for the effectiveness of the transfer must be met.

It is also common practice in share deals for the purchaser to conduct a due diligence procedure on the target property regarding the commercial, financial, fiscal, corporate, legal and labour status of the vehicle, and also on the same preliminary documents and contracts referred to in relation to asset deals.

The purchase of properties by means of share deals is not subject to IMT or stamp duty, except in the case of the purchase of an interest of 75 per cent or greater in an Lda. Further, no notary or registration fees are due, except in the case of the purchase of a quota in an Lda, where registration at the Commercial Registry is required.

The most common investment vehicles for shares deals are commercial companies – particularly public limited companies (SAs) and Ldas – property investment funds (FIIs) and property investment companies (SIIMOs).

SAs

SAs are characteristically larger companies, and have a minimum share capital of €50,000 divided into shares (bearer or nominative, book-entry or represented by certificates).

As a rule, SAs must have at least five shareholders (individuals or companies), but the law also allows the incorporation of an SA by a sole shareholder provided such a shareholder is a commercial company.

The liability of shareholders in an SA in relation to third parties is limited to the amount of their shares.

Ldas

Ldas are the most common type of company in Portugal, and correspond to the typical structure adopted by small and medium-sized companies. Their share capital is divided into ‘quotas’, with a minimum capital of €1 per quota holder. This type of company may be incorporated by a sole quota holder (which may be either an individual or a legal entity).

As in an SA, the liability of quota holders in this type of company in relation to third parties is limited to the amount of their quotas.

***FII*s**

FII's are collective investment vehicles subject to the principle of risk sharing and the pursuit of the interests of the participants. The participants' interests in these funds are called units.

FII's may be either open or closed-ended (i.e., either public or privately subscribed for) or mixed, depending on whether the units are variable, fixed, or both variable and fixed. Closed-ended FII's are the most common FII's used for investing in real estate.

The Securities Market Commission (CMVM) is the main regulatory body in relation to FII's, and is responsible for authorising FII's and supervising their compliance with the rules and requirements set out in the applicable laws and regulations.

FII's are managed by separate fund management companies that must be registered with both the CMVM and the Bank of Portugal, and must act independently and exclusively in the interest of the investors, at all times in observance of the principle of risk sharing and according to high standards of diligence and professional competence.

The assets of an FII must be entrusted to a single depositary, which must be a certain type of financial institution. The depositary and the management company are jointly responsible towards the participants for their compliance with the legal duties, regulations and the incorporation documents of the FII.

***SIIMO*s**

SIIMO's are collective investment vehicles with legal personality that take the form of a company through shares with variable or fixed capital (under the acronyms SICAVI and SICAFI, respectively), and whose assets are held under a regime of ownership and managed on a fiduciary basis by such companies, or independently by a contracted third party, in the sole interest of the shareholders. The incorporation of a SIIMO requires the prior authorisation of the CMVM.

SIIMO's can be self-managed, or managed by an appointed third party that must be a duly authorised investment fund management company. Similarly to FII's, SIIMO's can either be constituted with variable or fixed capital (SICAVI and SICAFI, respectively).

The main difference between FII's and SIIMO's is that in the latter, the holders of the shares can also be in charge of managing the fund. If they choose to do so, the investors will have greater control over the company's management and investment decisions. Where an FII form is used, the investors will have less control over the management and investment decisions. Additionally, a new tax regime applicable to collective investment undertakings, which has been in force since July 2015,⁶ has significantly relieved the direct tax burden on FII's when compared with SIIMO's.

6 Decree-Law No. 7/2015, of 13 January.

V REAL ESTATE OWNERSHIP

i Planning

The Portuguese territory is covered by several planning instruments (plans) of national, regional and municipal scope. The national and regional plans are more of a strategic nature, and municipal plans are clearly the most important consideration when applying for planning permission, construction licences, or both.

Municipal plans (which vary according to the level of detail of their rules in respect of land use and occupation) classify soil under two basic categories – urban or rural – and detail the specific admissible uses within these two categories.

The procedure to obtain allotment, construction or use permits is mainly contained in the legal regime for urbanisation and construction (RJUE). This regime was amended on January 2015, improving its efficiency by adapting the level of previous administrative control by the licensing authorities to the level of detail in the existing plans for the relevant area, while increasing the professional liability of all professionals involved in the preparation of drawings and plans or the execution of construction works.

Municipalities are the main licensing authorities that centralise the administrative procedure for obtaining any of the above permits. If in any specific case the opinion of governmental or external agencies is required, the municipality concerned shall procure such opinions.

Authorities have limited approval discretion when assessing projects (basically limited to the phase where architectural drawings are approved). These are assessed in relation to the applicable plans, and applications can only be refused on specific grounds foreseen in the RJUE.

Once built, and to be used for their purposes, all constructions must obtain a use permit that basically confirms that the project was built in accordance with the approved drawings, and any specific conditions imposed by or on the relevant construction licence.

ii Environment

Portuguese environmental legislation is based on the polluter-pays principle, according to which the person responsible for pollution must bear the costs resulting from said pollution as well as the costs related to the necessary measures to prevent and control the environmental damage caused. This means that a previous owner of real estate can be held liable for any environmental damage caused by it, and even if the parties agree to transfer this liability from the seller to the buyer, such an agreement will only be effective between them, and not in relation to third parties or any environmental authority.

There are three types of environmental liability: civil, administrative and criminal liability. According to the Environmental Liability Law,⁷ administrative liability may arise from damage caused to the environment (already in effect or imminent) by any economic activity or operator.

⁷ Decree Law No. 147/2008, of 29 July, as amended by Decree Laws No. 245/2009, of 22 September, No. 29-A/2011, of 1 March and No. 60/2012, of 14 March.

Civil liability may arise from damage to persons or assets as a result of environmental damage.

Criminal liability may also arise in the event of pollution or of damage to nature or to the ecosystem, under the terms set forth in the Portuguese Criminal Code.

Under the Environmental Liability Law, whenever a legal person is liable for any environmental damage, joint and several liability is imposed on its directors, managers, officers and representatives.

Regarding the administration and enforcement of environmental law, the state controls most activities. However, local authorities also have relevant powers in these matters, especially in relation to licences, urban waste and noise limits.

iii Tax

IMT

IMT is levied not only on the transfer of real estate (see Section IV, *supra*), but also in the following situations:⁸

- a* the signing of a rental contract that exceeds a period of 30 years;
- b* the direct acquisition of at least 75 per cent of the capital of an Lda that owns immoveable property;
- c* an enforceable option to purchase immoveable property accompanied by the transfer of the property; and
- d* other specific situations, such as the transfer of surface rights or granting rights of passage.

The current IMT rates can be found in Section IV, *supra*.

Several IMT exemptions are available for the following:

- a* state and municipal authorities;⁹
- b* collective entities of public interest or administrative public interest;¹⁰
- c* acquisitions of urban property exclusively destined for residential use, if the value for tax effects is lower than €92,407;
- d* acquisitions of real estate by real estate trading companies for resale;
- e* acquisitions of property by financial institutions in foreclosure, insolvency or winding up judiciary procedures; and
- f* acquisitions of immoveable property by open-ended real estate investment funds, closed-ended real estate investment funds of public subscription and pension funds established under Portuguese law.

Municipal property tax (IMI)

IMI is levied annually on immoveable property located within each municipality. IMI is levied on the tax value of the property, and is due for payment by the owner of the property by 31 December each year.

8 IMT Code, Articles 2(1) and 2.

9 IMT Code, Article 6(a).

10 IMT Code, Article 6(d).

The tax value of urban property is determined by reference to certain criteria (e.g., average construction price, type of construction, quality standard, age and location of the building, other features of the property) designed to set the taxable value at 80 to 90 per cent of the market value of the property. The taxable value of rural property is determined at 20 times its yearly notional income.

The current IMI rates are 0.8 per cent for rural properties; 0.3 to 0.5 per cent¹¹ for urban properties; and 7.5 per cent for properties held by an entity with residence in a tax haven.

Stamp duty

Stamp duty is generally charged on certain formal acts and documents, such as contracts, titles, books and papers, as outlined in the General Table of Stamp Duty, that take place in the Portuguese territory and are not subject to VAT.

As mentioned in Section IV, *supra*, the acquisition of *in rem* rights on immovable property located in Portugal attracts stamp duty at a rate of 0.8 per cent that is applicable to the higher of the sale value or the tax value of the property, and the stamp duty is paid by the acquirer of the immovable property. It should be noted that, as a general rule, this will also be subject to IMT.

Ownership of *in rem* rights on immovable property located in Portugal with a taxable patrimonial value equal to or exceeding €1 million also attracts stamp duty at a rate of 1 per cent per year.

iv Finance and security

A mortgage secured under a loan agreement is the most common financing and security package in real estate transactions in Portugal. Pledges of shares and credits (rents, deposits, indemnities, etc.) are also often seen in real estate transactions.

A mortgage is a form of security interest that entitles the beneficiary, in the event of default of the secured obligation or obligations, to be paid with preference over the borrower's non-secured creditors from the proceeds of the sale of immovable assets (or of rights created thereupon) or of moveable assets subject to registration (such as automobiles, ships and aeroplanes). Mortgages are created by means of a notarial deed executed before a notary public, or in a private document signed before, and certified by, a lawyer, solicitor, chamber of commerce and industry or registry office; however, the full validity and enforceability of this type of security depends ultimately on registration at the Land Registry.

Enforcement of a mortgage is made through the courts, under a specific proceeding whereby the beneficiary shall demand the judicial sale of the relevant asset and shall be paid from the proceeds resulting therefrom (after payment of other privileged creditors, if any).

11 Depending on the municipality in which the property is located.

Stamp duty is charged on the creation of mortgages and pledges (unless ancillary to a contract already subject to stamp duty) at a rate of 0.04, 0.5 or 0.6 per cent per month on the amount involved, depending on whether the term for repayment is less than one year, more than one year and less than five years, or five or more years, respectively.

VI LEASES OF BUSINESS PREMISES

The urban lease framework is mainly found under the Portuguese Urban Lease Law and under the Civil Code.

Commercial leases are qualified as non-residential leases, and encompass all leases for non-residential purposes. Lease agreements must be executed in writing and, when entered into for longer than six years, must be registered with the Land Registry Office to be effective in relation to third parties.

Properties built after 6 August 1951 must have a use permit issued by the relevant municipality consistent with the envisaged activity to be carried out at the premises.

Parties may agree on the duration of the lease, as well on the regime applicable to termination rights and break options and opposition to the lease's renewal. They may also agree on the rules applicable to any maintenance of and works on the leased property; the landlord is responsible for the maintenance of the property, unless otherwise agreed.

Parties may agree on phased or variable rents as well as rent update mechanisms. Rent is usually paid in arrears on a monthly basis, and is updated on an annual basis according to official criteria under the price consumer index. Service charges are also subject to the agreement of the parties.

A tenant's security obligations are normally secured via a cash deposit or a bank guarantee in the amount corresponding to a certain number of rental instalments.

Assignment of a tenant's contractual position is not allowed without the prior consent of the landlord, except in the case of a transfer of the tenant's undertaking, which entails the automatic transfer of the relevant lease agreement. The landlord has a pre-emption right in relation to the transfer of the undertaking.

Tenants who have held leases for longer than three years have a pre-emption right in the event of the sale of the relevant property. This right cannot be waived in advance by the tenant.

Parties may terminate the lease agreement in the event of any breach.

Eviction of a tenant is achieved through court procedures, except for in some specific cases (e.g., delay in the payment of rent or opposition to the execution of works required by a public authority) where it can be obtained via extrajudicial means (provided the tenant does not challenge the grounds for termination).

Commercial leases are subject to stamp duty (payable by the landlord) at a rate of 10 per cent on the first rent (except if VAT applies).

As a rule, rent is exempt from VAT in commercial leases, although the landlord may waive this exemption provided that certain conditions are met. Service charges, however, are subject to VAT.

VII DEVELOPMENTS IN PRACTICE

i Tourist facilities regime

Following its amendment in 2014,¹² mainly aimed at simplifying and liberalising the licensing procedures applicable to the setting up of tourist enterprises, and reducing the costs of licensing and classification procedures, the tourist facilities regime was again amended in 2015 through Decree Law No. 186/2015, of 3 September. This amendment was aimed not only at the same purposes as the previous amendment, but also at the promotion and recognition of nature tourism.

ii Urban rehabilitation

Through Decree Law No. 53/2014, of 8 April, the government has approved an exceptional and temporary regime that suspends, for a seven-year period, the application of a range of technical rules and requirements concerning the rehabilitation of buildings for residential use located in urban rehabilitation areas or that are more than 30 years old.

A simplified and quick planning permission procedure has also been put in place to stimulate rehabilitation in the residential market, along with a number of relevant tax incentives, such as an exemption from property transfer tax for the purchase of property for rehabilitation; an exemption from IMI for five years, renewable for a further period of five years; and a reduced VAT rate of 6 per cent (instead of 23 per cent) on the rehabilitation works.

Law No. 31/2014, of 30 May, which sets out the general basis of Portugal's soil, land use planning and construction public policies, also identifies rehabilitation as the main means of developing and regenerating urban centres, and encourages rehabilitation through the introduction of new and specifically focused planning instruments.

iii Hostels and local lodgings

Decree-Law No. 128/2014, of 29 August, later amended on 23 April 2015,¹³ has created a specific legal framework (different from the one that applies to tourist enterprises) for local lodgings applicable to the setting up and operation of establishments that provide temporary accommodation services to tourists, such as houses, apartments, hostels and other lodging establishments.

iv Golden visa programme

The golden residence permit programme was launched to attract foreign direct investment into the country by allowing a residence permit to be granted to an investor for engaging in investment activity in Portugal for a minimum period of five years.

According to the programme, the following are considered to be 'investment activities': the purchase of real estate with a value of at least €500,000 (or of at least €350,000, if the properties are 30-year-old buildings or buildings located in urban

12 Decree-Law No. 15/2014, of 23 January.

13 Decree-Law No. 63/2015, of 13 April.

rehabilitation areas, and the investment is also directed at the corresponding rehabilitation works), the transfer of capital with a value of at least €1 million and the creation of at least 10 jobs.

The investor is required to spend only seven days (continuously or intermittently) in Portugal during the first year, and 14 days (continuously or intermittently) during each of the following two-year periods.

v NHR

The NHR provides an attractive regime for foreigners who wish to establish their tax residence in Portugal, and has contributed to significant investments being made in the real estate market, namely in the residential sector. The NHR is one of the most competitive in Europe, particularly because of the following key features: no deemed or lump-sum taxation; no limitation on the remittance of funds; and no wealth tax or gift or inheritance tax on funds or assets transferred to spouses, ascendants (i.e., parents) or descendants (i.e., children).

As a rule, an individual is considered a domestic tax resident if he or she remains in the Portuguese territory for more than 183 days or, regardless of the time spent in the Portuguese territory, he or she occupies or owns a permanent residence, or occupies and owns a permanent residence, in Portugal on or before 31 December of the relevant year.

VIII OUTLOOK AND CONCLUSIONS

The real estate sector is traditionally dependent on and supported by the availability of financing, and although the Portuguese real estate market faced serious restrictions in this respect during 2015, the financing market is starting to show positive signs. Financial institutions and other sponsors, although adopting a conservative approach, have begun to indicate a greater degree of availability of finance for real estate transactions.

This moderately increased availability shown by the financing market has been accompanied by a number of well-conceived legal instruments designed to attract foreign investment, and which have shown positive results and are expected to continue playing an important role in future years. The golden visa and NHR programmes, existing tax incentives and EU funds for urban regeneration, along with the favourable quality-to-price ratio of Portuguese real estate, are expected to continue to sustain the development of the residential market in 2016.

The increasing number of tourists (which continues to grow, showing a 8.5 per cent increase in the first eight months of 2015) will also maintain its positive impact on the retail market, especially on the high-street retail market, where tourists are the main consumers, as well as in the hospitality sector.

Along with these positive economic indicators, corporate income tax was reduced to 21 per cent, further contributing to the positive expectations that surround the Portuguese real estate market.

Appendix 1

ABOUT THE AUTHORS

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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 with financing.

Mr Ferreirinha lectures in real estate law and on the postgraduate course in real estate management at ISEG, the School of Economics and Management of the University of Lisbon.

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