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Practical cross-border insights into real estate law

Real Estate 2023

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Expert Analysis Chapters

1 **Real Estate in Times of High Inflation**
Dan Wagerfield, Norton Rose Fulbright LLP

5 **The Turmoil of the Real Estate Market and the Opportunities Ahead**
Zheyuan Jin, Lingyue Sun, Xiang Mao & Ping Zhang, Merits & Tree Law Offices

Q&A Chapters

9 **China**
Anjie Law Firm: Cindy Pan & Wen Na

18 **Cyprus**
Andreas Demetriades & Co LLC: Demetris Demetriades

28 **England & Wales**
Norton Rose Fulbright LLP: Rowenna Butler

40 **Germany**
Jakoby Rechtsanwälte: Dr. Markus Jakoby

55 **Greece**
Sardelas Petsa Law Firm: Alexandra Petsa & Ino Tsiridou

65 **India**
Luthra and Luthra Law Offices India: Abhishek Mathur & Amay Bahri

84 **Indonesia**
Budidjaja International Lawyers: Tony Budidjaja, Muhammad Ghiffari & Sabita Anjaning

93 **Italy**
Ontier: Roberto De Simone & Laura Gentili

105 **Japan**
Anderson Mōri & Tomotsune: Kenichi Yamamoto & Kenya Busujima

115 **Luxembourg**
GSK Stockmann: Dr. Philipp Mössner & Chara Papagiannidi

126 **Mexico**
SMPS Legal: María Teresa Paillés, Andrés Pizarro Suárez, María Esther Rey & Eduardo Pizarro Suárez

136 **Portugal**
PLMJ: Rita Alarcão Júdice & Francisco Lino Dias

151 **Slovenia**
Law Firm Neffat: Domen Neffat & Jakob Stanič Gruden

162 **Switzerland**
MLL Meyerlustenberger Lachenal Froriep AG: Wolfgang Müller & Cosima Trabichet-Castan

171 **Taiwan**
Lee and Li, Attorneys-at-Law: Yi-Jiun Su & Lily Kuo

181 **Ukraine**
INTEGRITES: Dr. Oleksiy Feliv & Tetiana Storozhuk

191 **United Arab Emirates**
Kayan MZ Legal Consultancy FZE: Flora Ghali Gerges Yuosef

205 **USA**
Rosen Karol Salis, PLLC: Richard L. Rosen, Leonard S. Salis & Dennison D. Marzocco

225 **Zimbabwe**
Wintertons Legal Practitioners: Cordellia Nyasha Midzi & Peter Moor

Portugal


Rita Alarcão Júdice


Francisco Lino Dias

PLMJ

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 12.1. Those relating to tax should be listed in response to questions in Section 9.

The main legislation that governs real estate in the Portuguese jurisdiction is:

- The Constitution of the Portuguese Republic, which enshrines the right to private property. Under the Constitutional law, expropriation may only be carried out based on the law, considering the public interest and upon payment of fair compensation.
- The Portuguese Civil Code, which enshrines the right of ownership (comprising the full and exclusive right of use, enjoyment and disposal of the property), the admissibility of co-ownership, the regulation of surface rights, usufruct rights, pre-emption rights and horizontal property. The Civil Code also regulates sale and purchase agreements, leases, construction agreements, easements and mortgages.
- The Legal Framework of Urban Development and Construction ("RJUE") and the General Regulation of Urban Construction ("RGEU"), which regulate the development, construction and use of real estate.
- Decree-Law 84/2021, which sets out the rights of consumers in the case of a lack of conformity of digital goods, content or services, and provides a set of subjective and objective requirements for assessing conformity. As regards real estate property, a new liability period of 10 years is established for consumers in the case of structural defects.
- Decree-Law 268/1994, which regulates the horizontal property regime.
- Decree-Law 1/2020, which creates the right *in rem* of a permanent residence for life. This right *in rem* allows one or more natural persons to use a third party's house as their permanent residence for life, upon payment to the owner of a deposit and periodic payments.
- Decree-Law 275/1993, which establishes timesharing rights *in rem*.

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

The Portuguese legal system is based on civil law with written legislation as the main source of law.

Portuguese judges cannot create law but only interpret and apply it. Case law is merely a complementary source of interpretation and application of the law, and the rule of precedent does not exist in Portugal.

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

Only EU legislation may be relevant to real estate in Portugal. International law is not relevant, since real estate in Portugal is regulated by national 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 legal restrictions on the ownership of real estate by particular classes of persons (e.g., non-resident persons).

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?

Ownership in Portugal comprises the full and exclusive right of use, enjoyment and disposal of property, although the fiduciary ownership of assets located abroad is also accepted in the Madeira Free Trade Zone.

Co-ownership of property is admissible.

The usufruct right is also legally permitted and gives its holder the powers of use, enjoyment and administration during an agreed period or for life. The law imposes the sole limitation that the holder retains its form, substance and economic purpose.

Portuguese civil law also provides for the existence of the surface right, which consists of the right to build or maintain, in perpetuity or temporarily, a construction on land belonging to another person, or to plant or maintain plantations on such land, and may be constituted by contract, will or adverse possession.

Parties may also agree to enter into lease agreements (for a maximum term of 30 years) as well as lending ("*comodato*") agreements (establishing a temporary right of use of an immovable property without economic compensation).

It is also possible for a building or a set of functionally interconnected buildings to be subjected to "horizontal property" and condominium regulations.

3.2 Are there any scenarios where the right to land diverges from the right to a building constructed thereon?

Ownership of real estate encompasses the airspace corresponding to the surface, as well as the subsoil, with everything contained in it that has not been separated from it by law or legal transaction.

However, Portuguese civil law also establishes a surface right. The surface right consists of the right to build or maintain, in perpetuity or temporarily, a construction on land belonging to another person, or to plant or maintain plantations thereon. Public entities may also give a third party the right to build on a property, while maintaining ownership of the same.

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split? Are there any proposals to change this?

In principle, there is no split between legal title and beneficial title under Portuguese law. However, the Civil Code establishes a right *in rem* to usufruct, which permits the beneficiary to make the full use of the asset and take any economic benefit for a limited period of time (which cannot exceed the life of the beneficiary or, for legal entities, 30 years). The usufruct right must be recorded in the land registry.

4 System of Registration

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

Only land that is not part of public domain must be registered. The land registry offices are the public bodies responsible for the public system of registration, which is essential to prove the title over a property. The main purpose of the land register is to provide information on a property's legal status and guarantee the security of the property transaction. As a rule, it is compulsory for all matters relating to titles since 21 July 2008.

The final register constitutes a presumption of the existence of a right to the property that belongs to the registered holder under the precise terms set out in the register.

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

There is no state guarantee of title. The Portuguese legal system protects any person acquiring title from a registered owner. Any transfer of title is normally completed by a public deed executed before a notary, who will guarantee compliance with the legal requirements for the transaction to take place.

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

Only facts determining the constitution, recognition, purchase or changes of *in rem* rights over a property (acquisitions, leases with a duration of more than six years, mortgages, easements, horizontal property, etc.) are subject to mandatory registration at the Land Registry Office, and this must be filed within two months of the date of completion (a fine is due after that period). Any transfer of ownership that is not registered means the buyer is not protected against third parties ("*erga omnes effects*") and cannot transfer the property. Mortgages must be registered to be valid.

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

Leases (if their initial term does not exceed six years), lending agreements, promissory agreements for purchase and sale are examples of agreements not required to be registered at the land registry. For the promissory contract to be enforceable against third parties, the parties must expressly confer *erga omnes effect* on it. For this purpose, the parties must sign the document before a notary, lawyer or paralegal ("*solicitador*") who will certify their signatures and attest to their capacity.

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.

Definitive registration constitutes a presumption that the right exists and belongs to the registered holder, under the precise terms in which the registration defines it. The definitive registration of acquisition rights depends on the prior registration of the assets in the name of the person transferring those rights. If not registered, the facts subject to registration may only be invoked between the parties themselves or their heirs.

Mortgages must be registered to be valid.

In some cases, it is possible to bring forward the effects of registration by registering the acquisition on a provisional basis. This is usually done after the promissory sale and purchase agreement and before the final transfer deed. In this case, when the title is transferred, the effects of the registration are retroactive to the time of the provisional registration.

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

Ownership of a property is transferred by the deed of sale and purchase, rather than the registration. However, it is enforceable against third parties after the registration of the acquisition.

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

Under the principle of priority of registration, if there are multiple entries in the land register of incompatible rights over the same property, the right that was registered first prevails (even if the latter was created prior to that registration date). The right first registered prevails over subsequent entries relating to the same property, in the order of the dates of the entries, and, on a same date, of the time of the corresponding submissions. It is possible to register more than one mortgage. The subsequent mortgages registered after the first are subordinated to the first degree mortgage. In some cases, it is possible to bring forward the effects of registration by registering the acquisition on a provisional basis. This is usually done after the promissory sale and purchase agreement and before the final transfer deed. In this case, when the title is transferred, the effects of the registration are retroactive to the time of the provisional registration.

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.

The land registry offices are the public bodies responsible for the public system of registration, which is essential to prove the title over a property. The land registry offices are organised on a municipal basis; however, their jurisdiction is not limited by their geographical location and they can perform acts relating to any immovable property in Portugal.

Access to them is centralised through a national website available at: https://www.predialonline.pt, that provides online services for consultation of registrations and requests for registration.

5.2 How do the owners of registered real estate prove their title?

Definitive registration constitutes a presumption that the right exists and belongs to the registered holder, under the precise terms in which the registration defines it. Typically, owners of registered real estate prove their title by means of the presentation of an updated land registry certificate evidencing the registration of the acquisition in question.

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?

The transfer or constitution of rights *in rem* is normally completed by a public deed executed before a notary, who will guarantee compliance with the legal requirements for the transaction to take place. However, it can also be executed by means of a certified private agreement, signed in the presence of a lawyer or a paralegal. An asset deal cannot be completed electronically.

The application for registration must contain the identification of the applicant, the indication of the facts and properties to which it refers, as well as the list of documents that support it (relevant documents that prove the act to be registered, such as the sale and purchase deed or other acquisition titles, such as a judicial decision or other appropriate documents by means of which the title was created). Registration can be requested in person, by courier or electronically through an active digital signature, either by the interested party or by a lawyer, notary or paralegal. The viability of the request for an entry is assessed against applicable legal provisions, the documents submitted and previous entries. Special attention is paid to checking the identity of the building, the standing of the interested parties, the formal regularity of the titles and the validity of the acts contained in them. Further to paper copies of certificates, the information can be accessed online by means of an electronic certificate, available at: https://www.predialonline.pt, which contains up-to-date information on the legal situation of properties and on pending applications for registration. The application must be made on the basis of the property's description number or its tax number.

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

Should the register application be rejected or made provisionally due to some remaining doubts, the applicant is informed by reasoned order and may lodge an administrative contentious appeal to the registrar's hierarchical superior or appeal through the courts. The State and other legal persons governed by public law will be exclusively liable for damages resulting from unlawful actions or omissions, committed with minor fault, by the members of its bodies, employees or agents, in the performance of their administrative duties and due to that performance. The State and other corporate bodies governed by public law are also liable when the damage did not result from the specific conduct of a particular body, official or agent, or when it is not possible to prove personal commission of the action or omission but must be attributed to an abnormal functioning of the service.

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 and is this achieved by a search of the register? If not, what additional information/process is required?

The main purpose of the land register is to provide information on a property's legal status and guarantee the security of the property transaction. As a rule, it is compulsory for all matters relating to titles since 21 July 2008 (including encumbrances subject to registration). The final registration constitutes a presumption of the existence of a right to the property that belongs to the registered holder under the precise terms set out in the register. The Predial Online website provides access to information and certificates relating to immovable property recorded in the Portuguese land register and is accessible to any person (any person can obtain a land registry certificate in relation to any property by paying the applicable fee). Access to the tax certificates of a particular property is limited to the owners and their legal representatives. However, notaries, lawyers and paralegals may access such information, provided they have the tax identification of the property and the taxpayer number of the respective owner.

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.

In a real estate transaction, each party usually appoints a lawyer to assist them during the acquisition and negotiation process.

A real estate agent is also usually involved. The activity of the real estate agents is regulated in Portugal and all real estate agents must be licensed by the Portuguese Real Estate Regulator ("IMPIC") ("*Licença AMI*").

In specific types of properties (e.g., commercial and industrial), technical or environmental due diligence or inspection may be performed by experts in these fields and can be important in order to check the quality of the construction and compliance with all applicable legislation and regulations.

Accountants also play an important role, as they are equipped to provide a myriad of services, such as tax representation, annual tax statements, rents payroll and interaction with the Portuguese Tax Authority. All certified and accredited accountants can be consulted at: https://www.occ.pt. If the investor is not an EU resident, a tax representative must be appointed (a resident taxpayer) to interact with the Tax Authority on its behalf.

The notary is also usually involved as, in general, the definitive contract for sale and purchase is normally completed by means of a public deed executed before a notary. The notary

will guarantee compliance with the legal requirements for the transaction to take place. Nonetheless, the law provides that the definitive agreement can also be executed by means of a private agreement certified by a lawyer or a paralegal.

As the deed is always executed in Portuguese, non-Portuguese speaking parties should appoint an independent translator.

6.2 How and on what basis are these persons remunerated?

The commission due to the real estate agent can be a fixed amount or a percentage of the sale price of the property. Most real estate agencies operating in Portugal define their commission as a percentage of the sale price. VAT will be added to the commission.

The notary's fees are not fixed. They depend not only on the notary's office but also on the complexity and price of the transaction. These notary fees are usually paid by the buyer.

The fees of the remaining advisers are freely negotiated with the service providers.

6.3 Is there any change in the sources or 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?

Both equity and debt are active in the market. However, there are specific financing regulations applicable to bank debt in respect of the ratios between the amount of the loan and the value of the property to be financed (loan-to-value ("LTV")): 90% for loans for the purchase of private housing for long-term residence; 80% for credit for purposes other than one's own permanent housing; and 100% for loans for the purchase of property owned by the institutions and property leasing contracts.

6.4 What is the appetite for investors and/or developers to invest in your region compared to last year and what are the sectors/areas of most interest? Please give examples.

Investors and developers are particularly interested in logistic parks, student and senior residence projects, built-to-rent properties and sustainable and energy-efficient office buildings and hotels.

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.

The attraction for shopping centres has slowed down as a result of the pandemic, which has, instead, increased the appetite for logistic asset transactions and build-to-suit transactions, particularly targeting the last mile logistics segment.

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?

A contract for sale and purchase (asset deal) is normally completed by means of a public deed executed before a notary. The notary will guarantee compliance with the legal requirements for the transaction to take place. Depending on the nature of the property, these are usually the title to the property (land registry certificate), tax certificate, use permit, energy certificate ("EC"), official document with the technical characteristics of the unit (if applicable), tax payment receipts (Stamp Duty and property transfer tax ("IMT")), condominium charges certificate and a declaration of the Ultimate Beneficial Owner. The notary will also confirm the waiver of legal pre-emption rights and that the cancellation of encumbrances is ensured (if applicable). Nonetheless, the law provides that the definitive agreement can also be executed as a certified private agreement, signed in the presence of a lawyer or a paralegal.

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

The seller must act in good faith without omitting any information that, if known by the buyer, would prevent the buyer from completing the transaction. The information duties may be violated both by act, in cases where the seller has made inaccurate statements, and by omission, by remaining silent as to information that the buyer had an objective interest in knowing.

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

If the seller has made specific representations in respect of a property (e.g., assured certain qualities) that are proven to be wrong, the seller is liable toward the buyer, and ultimately, the buyer may be entitled to claim a reduction in the price. In respect of defects, if the buyer knew apparent defects, it is legally presumed that they were accepted. In case of concealed defects, the buyer has the right to demand (i) the correction of the defect, (ii) a price reduction, (iii) the termination of the agreement, or (iv) the payment of compensation. This obligation does not exist if the seller was not aware of the defect or lack of quality in the real estate asset without fault.

7.4 Do sellers usually give any form of title "guarantee" or contractual warranties to the buyer? What would be the scope of these? What is the function of any such guarantee or warranties (e.g. to apportion risk, to give information)? Would any such guarantee or warranties act as a substitute for the buyer carrying out his own diligence?

Parties may negotiate a set of the seller's representations and warranties and compensation obligations to reinforce those provided in the Civil Code or to include relevant facts pertaining to the property and the transaction. These usually include the seller's legal capacity to dispose of the asset, the non-existence of charges and encumbrances other than those registered at the land registry, compliance with environmental legislation and planning rules, payment of taxes and other charges, and the absence of legal disputes relating to the property, etc.

Representations and warranties are normally limited by the due diligence information, and specific indemnities may be agreed to cover issues resulting from the due diligence exercise. Depending on the type of transaction and parties involved, warranty and indemnity insurance may also be considered.

7.5 Does the seller retain any liabilities in respect of the property post sale? Please give details.

The seller is liable for defects in the properties it has built or rebuilt for five years after the transaction, and claims are subject

to an expiry period of one year, running from the knowledge of the defect. In the case of a real estate asset transaction between a professional seller and a consumer, the warranty period applicable to structural defects was extended, as of 1 January 2022, to 10 years.

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

The buyer is responsible for the payment of the sale price, real estate transfer tax and Stamp Duty, and for the fees due to the notary and land registry.

8 Finance and Banking

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?

Lending is a regulated activity in Portugal (both to consumers and corporate clients) and it may only be conducted by authorised entities. Decree-Law 74-A/2017 implemented the mortgage credit directive (Directive 2014/17/EU) in Portugal, and this created a set of rules protecting consumers from mortgage lending transactions. This law does not cover real estate lending with corporate clients, which are subject to similar protections. The provisions of Decree-Law 74-A/2017 are generally considered mandatory provisions and thus apply to any mortgage credit agreement with Portuguese resident consumers, regardless of the law elected by the parties governing the agreement.

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

A facility agreement secured by a mortgage and additional security is the most common financing and security method for real estate projects in Portugal. Securities usually associated with property financing comprise a mortgage of property, assignment of income, pledge of shares/quotas, assignment of credits as security, pledge of bank accounts or sureties. In line with global market practice, it is also common to set operational, collateral and/or financial covenants to protect loans (such as reporting obligations, negative pledges or restrictions to disposals, LTV ratios, interest coverage ratios, debt-service coverage ratios, etc.).

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?

In case of default of the secured obligation, the lender will not be entitled to repossess the mortgaged asset without court proceedings. Therefore, the lender must bring an enforcement action in order to request the judicial sale of the mortgaged property.

8.4 What minimum formalities are required for real estate lending?

Pursuant to Portuguese law, loan agreements entered into by licensed entities must be in writing, whereas mortgages are created by a notarial deed, which is essentially a contract prepared, testified by and executed before a notary public. The notarial deed for the creation of mortgages is not sufficient for the full validity and enforceability of this type of security, because its registration at the Land Registry Office is also required as condition for its validity (this formality is usually dealt with by the notary).

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

Upon enforcement or foreclosure proceedings against the borrower, the lender will take priority over other creditors whose claims are not preferential or who have no registered priority. In the event of an enforced sale, assets are transferred free of any liens, as well as of any other *in rem* rights with no registration prior to any seizure, pledge or guarantee.

8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

Security over a property (such as a mortgage or an earnings assignment) must be registered at the Land Registry Office to be effective. Assuming that all the legal requirements are met, the security will be valid and enforceable.

However, there is a special provision under Portuguese insolvency law that states that, in a generic way, any acts that reduce, frustrate, hinder, endanger or delay the satisfaction of the creditors can be clawed back. In the event the borrower is declared insolvent, the insolvency administrator may attempt to claw back acts carried out up to two years before the insolvency proceedings were started that are detrimental to the debtor and creditors' interests. As a rule, clawback requires the bad faith of the third party (conditional clawback). Under the law, bad faith is understood to be the knowledge, at the date of the act, of any of the following circumstances: (i) the debtor is in an insolvency situation; (ii) the prejudicial character of the act and that the debtor, at that date, is in a situation of imminent insolvency; and/or (iii) the start of the insolvency proceedings. However, there are certain transactions that are deemed detrimental regardless of bad faith. As such, these acts may be unconditionally clawed back. The transactions include:

- Creation of *in rem* securities by the debtor securing pre-existing obligations or others replacing them, within the six months prior to the start of the insolvency proceedings.
- Creation of securities *in rem* simultaneously with the creation of guaranteed obligations within the 60 days prior to the start of the insolvency proceedings.

The clawback has retroactive effects, meaning the insolvent's estate will be put in the position that would have existed if the act had not been performed. The other party is under an obligation to return what it has received and, if it fails to comply with this obligation, the insolvency administrator may take legal action to force it to do so. The insolvency administrator may also impose sanctions if the other party persists in not complying with the obligation after the judicial decision is made. If the acquisition was made for no consideration, any third party in good faith only has to pay back to the extent it was enriched. If in bad faith, regardless of whether this is real or assumed, the third party must return everything it has received. In turn, the insolvent estate is also under an obligation to return what it has received if the assets in question can be identified and separated from those that belong to the remainder of the estate.

8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

As a rule, the lender will be required to terminate the secured contract, on the grounds of default, before beginning any enforcement action.

A credit, due and payable, secured by a mortgage may be enforced through an enforcement action when the creditor has an enforcement title (such as an authentic document or a certified document in which the debtor acknowledges its obligation – a loan agreement is not an enforcement title itself unless it is authenticated by a notary or lawyer, which is usually the case when it has *in rem* security) in relation to it.

The creditor asks the court to attach the property (real estate) and prepare for its sale. The creditor usually appoints an enforcement agent who will take the necessary steps to ensure the seizure of the property. However, the debtor retains all powers over the property, except the power to sell, and will continue to have access to and use of the property.

The borrower may try to frustrate the enforcement action, for instance by entering into a lease agreement, in order to make the judicial sale more difficult or to try to make it less attractive. Although it does not prevent the foreclosure of the security, in case of judicial sale, the lease agreement may not be considered extinguished (which may be a limitation on its effective sale).

Under Portuguese law, there is currently: (i) no specific protection concerning the enforcement of a mortgage over the main residence of the borrower, including no specific restrictions on the judicial sale of that property with reference to the overall amount of the debt; and (ii) no requirements for creditors to accept payment *in lieu* in relation to mortgage loans. However, in the case of the judicial sale of the main residence of the debtor: (i) exceptional and temporary legal measures adopted due to the COVID-19 pandemic (Law 1-A/2020 of 19 March) established the stay of acts carried out in insolvency and enforcement proceedings relating to taking possession of family homes either owned or leased by debtors; (ii) in addition, the sale of family homes under insolvency or enforcement proceedings may also be stayed if the debtor argues that this is likely to endanger the debtor's livelihood, provided the stay does not cause excessive harm to the creditor; and (iii) in cases where the enforcement of the mortgage is being challenged by the debtor on substantive grounds, the debtor can ask the judge to order the sale to be suspended until a decision is rendered on the substantive challenge, where a potential sale could cause serious harm to the debtor.

Furthermore, as of late 2012, a set of legal and regulatory rules were approved addressing the approach that credit institutions should take in order to prevent and monitor default situations in credit contracts with private bank customers, including:

- Decree-Law 227/2012 of 25 October encourages credit institutions to adopt an Action Plan for Default Risk ("PARI", the Portuguese acronym). It sets out procedures and measures to prevent loan default. It also creates the Out-of-court Procedure to Correct Default Situations ("PERSI", the Portuguese acronym). The aim of PERSI is to encourage negotiations outside the courts between credit institutions and bank customers in cases of default of loan agreements.
- Law 59/2012 of 9 November 2012 establishes some other extraordinary protections for home loan debtors. The main provisions are:
  - The credit institution and debtor can agree to make the mortgage loan subject to some special rules. In particular, they can agree that the judicial sale or the payment *in lieu* by default of the debtor extinguish all the debtor's obligations under the loan agreement, except for the proceeds of the sale or the fixed value for the payment *in lieu*.
  - Until the judicial sale of the mortgaged property, if no other secured creditors, or the Tax Authority or the Social Security have filed credit claims against the debtor in the enforcement proceeding, the debtor has the right to resume the contract. To be able to do this, the debtor must pay in full any overdue and unpaid instalments, as well as any default interest and expenses incurred by the credit institution, if any.

8.8 What is the impact of an insolvency process or a corporate rehabilitation process on the position of a real estate lender?

Under Portuguese insolvency law, a borrower is insolvent whenever it is unable to perform its due obligations; that is, the obligations that are already matured. Nevertheless, borrowers are also considered insolvent whenever their liabilities substantially exceed their assets. The declaration of insolvency determines the immediate seizure of all the borrower's assets on behalf of the insolvent estate, including mortgaged real estate. The assets are then administrated by the insolvency administrator or, in certain cases, by the insolvent company itself. All ongoing legal action, including enforcement actions, are suspended and usually subject to or joined to the insolvency proceedings.

The mortgage loans are deemed to have matured and the lender can file its credit claim in the determined time limit after the decision that declares the insolvency is published on the official site for the publicity of insolvencies (Citius, available at: https://www.citius.mj.pt/portal/default.aspx).

An insolvency plan may be presented by the debtor, the insolvency administrator or any creditor. When an insolvency plan is being prepared or in any way discussed, the liquidation of the assets and shares are suspended. If the insolvency plan is not approved, the liquidation stage starts and the insolvency administrator begins to sell all the seized assets.

In general, all creditors have equal rights and, when the debtor's assets are not sufficient, the creditors will be paid proportionally. This determination is excluded in some cases, when, as a result of their ranking, certain debts must be paid first (such as the credits secured over properties). However, some categories of debts, such as amounts owed by the insolvent estate, court costs, amounts owed to employees (if they work at the mortgaged premises), certain tax debts and other special privileges (in this order) are paid prior to guaranteed *in rem* creditors.

An insolvency declaration does not suspend the effects of leasing agreements, thus they remain in effect. However, the insolvency administrator has the right to opt between continuing or terminating the leasing contract and should take this decision within a reasonable timeframe. If he or she fails to do so, the landlord may issue a notice to the insolvency administrator to decide on the continuity of the leasing contract on penalty of termination.

If the leasing contract remains in force, payment of rents falling due after the date of the declaration of insolvency is enforceable against the insolvent estate. Those amounts will be considered debts of the insolvent estate. This means they will be ranked and paid prior to any creditors, including secured/privileged creditors. If rents due after the opening of insolvency proceedings are not paid, the creditor is also entitled to terminate the leasing contract under the applicable contractual terms.

Therefore, within the period between the opening of insolvency proceedings and the decision to be taken by the insolvency administrator regarding ongoing leasing contracts or notice of the landlord and termination, the landlord may not repossess the asset.

If the leasing contract has already been terminated by the date of declaration of the insolvency, the landlord/owner can request the immediate handover of the property and claim the total amount of the rents and other penalties due and unpaid (as a common credit, if no *in rem* security is provided).

Regarding the corporate rehabilitation process, Portuguese law has established three pre-insolvency procedures for companies: the Special Revitalisation Process ("PER"); the Out-of-court Business Recovery Scheme ("RERE"); and the Extraordinary Business Viability Process ("PEVE").

In general, none of these procedures will have any effect on the real estate lender's position (unless the lender agrees to change the contract clauses) and the security will remain effective. However, the payment terms may be modified, provided the payment plan is approved by the mandatory legal majority of creditors.

8.9 What is the process for enforcing security over shares? Does a lender have a right to appropriate shares in a borrower given as collateral? If so, can shares be appropriated when a borrower is in administration or has entered another insolvency or reorganisation procedure?

Unlike a mortgage, the enforcement of a pledge may take place by means of an enforcement action or can be implemented out-of-court, if the applicable security documents provide for this possibility.

As a rule, under Portuguese law, the pledgee, subject to the occurrence of an event of default, is entitled to be paid from the proceeds of the judicial sale of the pledged assets, prior to any common creditor, although after any main statutory privileged credits (i.e., payment of court costs, certain types of overdue taxes and overdue employment claims and social security charges).

However, the pledge agreement may stipulate – and the market standard is that the contracts do provide for these possibilities – the enforcement of the pledge by means of the sale of the pledged assets or rights without recourse to the courts, i.e., through a private sale. In this case, the pledgee may apply the funds thus received to the payment of its credit.

For financial pledges and pledge agreements executed after 2017 that are not financial pledges, the pledge agreement may also authorise the pledgee to acquire title over the pledged assets provided the purchase consideration is set through a valuation carried out after the secured obligations become due and payable, in accordance with the valuation terms contractually agreed. The parties may also agree that the court will decide on the value to be attributed to the pledged assets.

In order to facilitate the exercise of the pledgee's rights, in particular, the enforcement of the pledge out of court, it is usual for the security documents to be accompanied by instruments such as irrevocable powers of attorney, to enable the creditors to take whatever action may be required to protect or enhance their rights.

If the share pledge agreement itself does not contain any description of the enforcement mechanism, it will be necessary to enforce the pledge agreement by court action.

In this case, it will be necessary to confirm whether the pledge agreement is considered to be an enforcement title under Portuguese law. Under the Portuguese Code of Civil Procedures, private documents creating or recognising any obligation must be registered or authenticated by a notary or other entity or professional with power to so act (e.g., lawyers) in order to be valid as the basis for enforcement proceedings.

Should it be confirmed that the pledge agreement was not executed under the above-mentioned formalities, the judicial enforcement of the pledge may require a prior and time-consuming declarative action ("*ação declarativa*") to obtain a court decision recognising the amount owed. Furthermore, only afterwards will it be possible to bring an enforcement action for the seizure of the pledged assets and their further sale or adjudication as repayment of the credits in question.

The above-described process for the enforcement of mortgages will apply to the enforcement proceedings based on a pledge.

In the event of insolvency of the borrower, and in contrast with the above reorganisation procedures (PER, RERE and PEVE), there will be limitations on the possible out-of-court enforcement of the pledge. The shares will be seized on behalf of the insolvent estate and will be sold within the liquidation procedure (in which the lender my ask for the request to be awarded to it). After the sale, the pledge creditor (i.e., the lender) will be paid according to the ranking of credits.

9 Tax

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

Generally, transfers of real estate located in Portugal are subject to the IMT, levied on the transfer price stated in the transfer deed or agreement, or on the taxable value of the property for real estate tax ("IMI") purposes, depending on which one is higher. This tax is payable by the acquirer. The IMT rates are 6.5% for urban property, 5% for rural property, and 10% if the acquirer is a company resident in a listed tax haven or a company controlled, directly or indirectly, by a company resident in a listed tax haven. For real estate exclusively intended for residential use, progressive IMT rates between 1% and 8% will generally apply in accordance with the taxable value of the property. IMT exemptions may apply, for example, on certain acquisitions of real estate meant for urban rehabilitation, or on the acquisition of property for resale purposes by real estate companies. In addition to IMT, Stamp Duty will also apply on the acquisition of real estate, at a 0.8% rate applicable on the taxable value of the property for IMT purposes.

9.2 When is the transfer tax paid?

The interested party (i.e., the acquirer) must file the appropriate official IMT assessment form with the local tax office or electronically, and the tax should be paid on that same day or in the first following business day. Where the transfer takes place through an act or contract executed in a foreign country, the payment of the tax must be made during the following month.

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

Capital gains obtained by resident individuals on the transfer of real estate generally fall under category G (unless deemed business income), and the taxable income for Personal Income Tax ("IRS") purposes is the net gain of the year (i.e., the total capital gains minus the total capital losses), 50% of which is then added to the taxpayer's total income (i.e., deriving from all types of income), and subsequently subject to the general IRS progressive rates. The acquisition value may be updated by applying the monetary depreciation coefficients whenever, on the date of sale, at least two years have passed since the acquisition. On the other hand, a special 28% flat IRS rate will apply to capital gains obtained by non-resident individuals.

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

Transfers of real estate are generally exempt from VAT in Portugal. It is possible to waive the VAT exemption to allow for the deduction of input VAT, if certain conditions are met (including the allocation of the property to VAT-taxed activities, etc.). In that case, the standard VAT rate of 23% will be applicable and the acquirer will be liable for the VAT assessment through the reverse-charge mechanism.

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

No other taxes are due by the seller (besides capital gains mentioned in the answer to question 9.3 above) on the disposal of a property located in Portugal.

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

If more than 50% of the company's assets comprise real estate, and by means of the transfer, an ownership of or above a 75% threshold in the share capital of a company is acquired, IMT is due on the acquisition. The IMT is assessed on the higher of the taxable value or book value of the real estate, and in proportion to the percentage of shareholding acquired. Any real estate directly allocated to an agricultural, industrial or commercial activity (excluding real estate resale activity in the case of real estate companies) is excluded from the above calculation.

9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

The buyer should conduct the appropriate searches and other due diligence to check that IMT on previous acquisitions, IMI and AIMI (if applicable) was properly assessed and paid. This is done by requesting the IMT proof of payment, the property's IMI or AIMI assessments and/or a certificate of the inexistence of tax debts issued by the Tax Authority regarding the seller.

10 Leases of Business Premises

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

The following laws regulate the lease of business premises:

- the Civil Code; and
- the New Urban Lease Regulations ("NRAU") approved by Law 6/2006.

The applicable Portuguese urban lease regulations divide leases into two types: (i) leases for housing purposes; and (ii) leases for non-housing purposes.

10.2 What types of business lease exist?

The assignment of the use of non-residential properties such as retail, industrial and offices may be agreed by a lease agreement under the Urban Leasing Law. This law gives the parties more flexibility to negotiate the conditions of the lease when compared to residential leases. In order to assign the use of non-residential properties, services agreements (if services are provided and not only the use of the premises is assigned) or a shop use agreement (if the premises are in a shopping centre or commercial complex and ancillary services are provided) can also be considered.

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?

The Urban Lease Law is relatively flexible, especially for non-residential purposes, as the most important features of the lease can be freely stipulated by the parties. These include duration, renewal and termination – although with certain limits – rent review scheme, maintenance, and works, among others.

Lease contracts must be executed in writing, and if their term is greater than six years, the contract must be registered at the Land Registry Office.

In addition to the mandatory references (identification of the parties, description of the leased premises, rent amount, reference to the applicable use permit, etc.), lease contracts normally include provisions on the term, renewal conditions, termination, rent review mechanisms, security (typically a security deposit or a bank guarantee), maintenance of the leased premises, execution of works in the leased premises and reinstatement duties.

- Term: The initial term of non-residential lease agreements cannot exceed 30 years. According to some scholars, it cannot be less than one year, save for the cases of leases for transitional non-housing purposes. Others are of the opinion that no minimum term is applicable. If the parties do not stipulate any term for the lease agreement (and did not expressly opt for the – uncommon – undetermined duration), the agreement is deemed to have been executed for a fixed term of five years. The renewal or non-renewal of the agreement may be freely agreed by the parties. According to some scholars, however, each renewal period must have a duration equal to its initial term, or of five years if the initial term is less.
- Rent Increases: Rent update mechanisms are freely agreed by the parties. In the absence of specific regulation, updates can occur annually, by notice to the tenant at least 30 days before the update takes place, according to the rent update coefficient published yearly by the Portuguese National Institute of Statistics (which is based on the consumer price index – excluding housing). Considering the increase in the inflation rate throughout Europe, Law 19/2022 was published on 19 October, establishing a 2% cap on the rent updating coefficient for 2023 (applicable where the rent is updated based on legal rent updating criteria). This is counter-balanced by a tax compensation to landlords.
- Unless agreed otherwise, the tenant may not assign its contractual position to third parties nor sublet the leased premises without the prior consent of the landlord. In the case of a transfer of business ("*trespasse*"), the tenant's right to transfer it when established in the premises is allowed and cannot be eliminated by the parties or be waived in advance by the tenant. Unless otherwise agreed by the parties, the landlord is lawfully entitled to a pre-emption right in the case of a business transfer, or in the case that the business (including the lease right) is given as payment-in-kind by the tenant.

- The landlord may sell the premises to third parties without prior consent of the tenant (the landlord's position being automatically assigned to the acquirer, pursuant to law), although tenants with leases in force for more than two years have a pre-emption right in the sale of the property.
- Change of control of the tenant does not affect the validity of the lease, unless agreed otherwise.
- Insurance – multi-risk/fire insurance is mandatory for the owner if the building is divided as horizontal property. Nevertheless, even when buildings are not divided as horizontal property, it is standard market practice for the leased building to be covered by a multi-risk/fire insurance policy – in this scenario, the parties may freely agree that the tenant is responsible for underwriting the insurance policy.

A change of control of the tenant does not usually have any impact on the validity and effectiveness of the policy. However, it must be confirmed on a case-by-case basis in the terms and conditions of the policy.

If the building is leased under a financial lease, Decree-Law 149/95 of 24 June provides that the tenant is the one obliged to underwrite a multi-risk insurance policy to cover the leased property against damage.

- The parties may freely agree on the allocation of maintenance, repair and other costs, as well as determine which party is liable for the execution of works in the leased premises.
- It is standard market practice for the landlord to pass on to the tenant all costs of maintenance, repair, utilities and other services, whilst the landlord takes on the costs relating to building insurance, property taxes and structural works.
- Although not common (except in "built-to-suit" or "sale and leaseback" transactions), it is permitted under Portuguese law to provide for "triple net" leases, whereby the tenant bears all the costs relating to the premises during the duration of the lease/contract.

In both cases, service charges are normally determined by reference to the area of the premises in proportion to the overall area of the building.

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

The renting of a property is usually VAT-exempt. It is possible for the landlord, if certain requirements are met, to waive the VAT exemption, in which case a 23% VAT rate is charged on the rent. From another perspective, the renting of a property that includes areas properly prepared and equipped for carrying out a business activity – usually with related services of cleaning, security or reception – in "office centre"-type contracts (meaning that the provision of the space is not the main component of the service) is: excluded from the VAT exemption generally applicable to the renting of real estate; and, subsequently, subject to VAT at a 23% rate over the amount of the rent, to be assessed and paid by the landlord. Payments made to Portuguese-resident landlords will be deducted at source at the rate of 25% if the tenant is a company or an individual with organised accounting. The tax withheld will be credited against the landlord's final tax liability. For IRS purposes, rental income will be subject to withholding tax at the rate of 28% (if not classified as business income). For Corporate Income Tax ("CIT") purposes, rent income derived by Portuguese-resident landlords will be subject to the general CIT rate (21%), whereas payments made to non-resident landlords will be subject to withholding tax at the rate of 25%. Stamp Duty will also be levied on a month's rent and, for each agreed rent increase, at the rate of 10%, to be paid by the landlord, if the renting is not subject to VAT.

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?

Either party may terminate the contract, in general terms of law, on the basis of non-performance by the other party that, due to its gravity or consequences, renders the subsistence of the lease unenforceable against the other party. In addition, the applicable Portuguese lease regulations establish a non-exhaustive list of cases of default justifying a landlord's decision to terminate the lease contract. The landlord's termination must be declared judicially, except when based on the tenant's opposition to works ordered by public authorities or on a delay of three months or more in the payment of the rent, charges, costs or expenses or delay for a period of more than eight days, in the rent payment, on more than four occasions, whether or not consecutive, in a period of 12 months with reference to each agreement.

If not stipulated otherwise, the landlord is not entitled to terminate the lease agreement during the lease term. If the agreement is subject to renewal, the landlord can terminate it for the end of the initial period or of the renewal in course, by means of a written notice to the tenant with the prior notice periods agreed by the parties or established in the law. In any event, the Civil Code provides that "in the first five years after the beginning of the agreement, regardless of the term stipulated, the landlord may not oppose the renewal". As such, in agreements that are subject to renewal, the landlord must respect a minimum initial period of five years. In this regard, one cannot exclude the interpretation (of the tenant and, at the limit, of a court of law) according to which, in an agreement entered into for an initial period of five years, the landlord may only express its intention to oppose to the renewal – that is, send the letter to the tenant – after five contractual years have passed.

Lease agreements entered under the undetermined duration arrangements may be terminated by the landlord due to demolition, refurbishment or deep restoration where the maintenance of the lease is not possible (with the limits and under the conditions legally provided) or with a minimum prior notice of five years. In that case, the tenant and its workers are entitled to receive compensation for any losses proven to have resulted from the termination.

If, upon termination of the lease, the leased premises are not handed over to the landlord, the tenant will have to pay to the landlord, as compensation and up to the date when the leased premises are handed over, an amount equivalent to double the rent agreed, for each month of delay or for each day of delay on a *pro rata* basis. Compensation for improvements made by the tenant may also apply in certain circumstances.

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?

The landlord is no longer liable for its obligations once the property is sold. The new owner is liable towards the tenant. Except where otherwise agreed between the original tenant and the assignee, the latter is not responsible for rents relating to the period 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).

Green leases are being implemented in Portugal following the international practice to achieve the "Green Deal" goals. Portuguese law does not impose any meaningful green obligations, save for the obligation of having an Energy Performance Certificate.

The contractual practice has been to retain some non-prescriptive models provided by international organisations, as well as the best practices for the sector. The extent of these provisions depends on the ambition of the parties as to how green they wish for the lease to be. In Portugal, the bar on sustainable lease goals is high, given the profile of landlords and tenants wanting to have a green stamp at this early stage (namely: institutional investors, international brands and funds).

Typical provisions normally relate to a building's environmental performance (consumptions and emissions of greenhouse gases), sharing of data, co-operation in improving environmental performance and rules, and materials to be employed in any works and improvements.

10.8 Are there any trends in your market towards more flexible space for occupiers, such as shared short-term working spaces (co-working) or shared residential spaces with greater levels of facilities/activities for residents (co-living)? If so, please provide examples/details.

Co-working spaces and the offer of office spaces with a set of services attached are a trend that has increased in recent years. These cases are usually based on service agreements and not in lease agreements. Serviced apartments and co-living are also increasing in the Portuguese real estate market.

11 Leases of Residential Premises

11.1 Please briefly describe the main laws that regulate leases of residential premises.

The following laws regulate the lease of business premises:

- the Civil Code; and
- the NRAU approved by Law 6/2006.

The applicable Portuguese urban lease regulations divide leases into two types: (i) leases for housing purposes; and (ii) leases for non-housing purposes.

11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?

The law does not differ if the premises are intended for multiple different residential occupiers. The Civil Code establishes that, in housing leases, besides the tenant, the following persons may reside in the premises:

- All those who live with the tenant in common economy (those living with the tenant in a non-marital partnership, the tenant's relatives or kin in the direct line or up to the third degree of the collateral line, even if they pay some remuneration, as well as people in relation to whom, by force of law or by legal transaction not directly related to the dwelling, there is an obligation of cohabitation or maintenance of the dwelling).
- A maximum of three guests, unless otherwise stipulated.

11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs" e.g. insurance and repair?

The agreement's initial term cannot exceed 30 years and cannot be less than one year, save for the cases of leases for non-permanent housing purposes or special transitional purposes. If the parties do not stipulate any term for the lease agreement (and did not expressly opt for the – uncommon – undetermined duration), the agreement is deemed to have been executed for a fixed term of five years.

Rent increases are freely agreed by the parties. In the absence of specific regulation, updates can occur annually, by notice to the tenant at least 30 days before the update takes place, according to the rent update index that is approved annually by the Government. Considering the increase in the inflation rate throughout Europe, Law 19/2022 was published on 19 October, establishing a 2% cap on the rent updating coefficient for 2023 (applicable where the rent is updated based on legal rent updating criteria). This is counter-balanced by a tax compensation to landlords.

The renewal or non-renewal of the agreement may be freely agreed by the parties. According to some scholars, however, each renewal period must have a duration equal to its initial term or of three years if the initial term is less.

The parties may freely agree on the allocation of maintenance, repair and other costs. They may also determine which party will be liable for the execution of works in the leased premises.

It is the landlord's responsibility to carry out all ordinary or extraordinary maintenance works required by the laws in force or by the end of the contract, unless stipulated otherwise.

The parties must stipulate, in writing, the charges and expenses arrangements and, in the absence of stipulation to the contrary, the following will apply:

- The ongoing charges and expenses relating to the supply of goods or services in relation to the leased premises will be borne by the tenant.
- In the lease of an autonomous unit (condominium regime), the charges and expenses relating to the administration, maintenance and use of common parts of the building, as well as the payment of services of common interest, will be borne by the landlord.

Therefore, the provisions regarding insurance are similar to those for business premises. This means that if the property is divided as horizontal property, the landlord is obliged to take out and maintain valid a multi-risk/fire insurance policy for the leased property. In other cases, the parties may freely agree that the tenant is responsible for taking out the insurance.

11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?

The applicable Portuguese lease regulations establish a list of cases of default justifying a landlord's decision to terminate the lease contract. The landlord's termination must be declared

judicially except when based on: (i) the tenant's opposition to works ordered by public authorities; or (ii) a delay of three months or more in the payment of the rent, charges/costs or expenses, or a delay for a period of more than eight days in the rent payment, on more than four occasions, whether or not consecutive, in a period of 12 months with reference to each agreement.

If, upon termination of the lease, the leased premises are not handed over to the landlord, the tenant must pay to the landlord, as compensation and up to the date when the leased premises are handed over, an amount equivalent to double the rent agreed, for each month of delay or for each day of delay on a *pro rata* basis. Moreover, the landlord may resort to the National Lease Platform to obtain an eviction (with certain limitations, depending on the situation of the tenant).

12 Public Law Permits and Obligations

12.1 What are the main laws which govern zoning/permitting and related matters concerning the use, development and occupation of land? Please briefly describe them and include environmental laws.

Development, construction and the use of real estate must comply with the urban planning legislation and all the administrative procedures regarding licensing and use permits. These are based on the principle that urban development should comply with all relevant plans governing the occupation, use and transformation of land. The territorial management instruments are classified and divided into different levels: national; regional; and municipal. The national regional planning policy ("PNPOT") defines the fundamental directives and guidelines for the organisation of the national territory. At a national level, sector plans and special planning instrument should also be considered. There are Regional Land Management Plans and intermunicipal and municipal masterplans, urban development plans, and detailed urban development plans. Portugal regulates the development, construction and use of real estate through the RJUE and the RGEU. There are numerous different laws governing environmental protection. The main environmental laws that may be relevant in standard real estate projects are: the bases of environmental policy (Law 19/2014 of 14 April); the legal framework for environmental impact assessment (Decree-Law 151-B/2013 of 31 October); the water law (Law 58/2005 of 29 December); the legal framework of prevention and control of emissions of pollutants into the air (Decree-Law 39/2018 of 11 June); the general framework of waste management (Decree-Law 102-D/2020 of 10 December); the Portuguese Law on Climate (Law 98/2021 of 31 December); and the legal framework for nature conservation and biodiversity (Decree-Law 142/2008 of 24 July).

12.2 Can the state force land owners to sell land to it? If so please briefly describe including price/compensation mechanism.

Properties and the rights inherent to them may be expropriated for reasons of public utility included in the powers, purposes or object of the expropriating entity, upon the contemporaneous payment of fair compensation in accordance with the Portuguese Expropriation Code. The compensation is not intended to reimburse the benefit achieved by the expropriating entity but to compensate the losses that the expropriated party incurred. The parties may agree that the compensation is satisfied, in full or in part, through the transfer of assets or rights to the expropriated party. When the need for expropriation arises from public calamity or from internal security or national defence requirements, the State or the competent public authorities may take immediate administrative possession of the assets in order to meet the need that determined their intervention, without any prior formality, following, without further steps, the provisions of compensation established for litigious proceedings.

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

The municipal services are responsible for controlling these administrative procedures, including the construction and use of buildings and the division of land into separate titles. Depending on the development, other public authorities could also be called on to give binding opinions. In the case of failure to comply with planning decisions or zoning requirements, fines could be imposed, as could embargoes, prohibitions of use, demolition orders and compulsory works. Upon completion of the construction, a use permit will be issued for the building or units to certify its conformity with approved plans and projects.

An interested party may submit a request for advance information on the feasibility of a specific urban project and on any legal or regulatory constraints. The advance notice decision is binding and remains in force for one year.

The key environmental authorities are the Portuguese Environmental Agency ("APA"), the Inspectorate General of the Environment ("IGAMAOT"), the Portuguese Nature and Forest Conservation Institute ("ICNF"), and the Commissions for the Regional Coordination and Development ("CCDR"), with one for each region. The APA's website provides information on a range of environmental matters.

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

The execution of urban planning operations (e.g., building works) must generally be examined in advance and may require licensing, prior notice or use permits. RJUE establishes which cases require licensing and advance notice and also lists operations that are less relevant and are thus exempt from these requirements.

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

Building/use permits and licences are commonly obtained in Portugal. In fact, it is not possible to execute a sale and purchase deed without proof of the existence of the use permit if it is legally required, because, in general, properties built before 1951 will be exempt from the need for a use permit. Even a lease contract with a duration longer than six months must be made in writing and identify the use permit. A lease for a purpose different to the authorised use under the use permit is null and void.

12.6 What is the typical cost of building/use permits and the time involved in obtaining them?

The fees for obtaining building/use permits are defined locally by the municipal authorities. In Portugal, the time involved to obtain them may vary depending on the Municipality in question and can be delayed considerably in cases that require opinions from different external bodies.

12.7 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 or development/change of use?

Law 107/2001 of 8 September is the Basic Law of Cultural Heritage and the main legislation governing this subject.

From the time of the notification of the beginning of the procedure for classifying the building as property of national, public, or municipal interest, a set of rules apply to safeguard the building. These include the registration in the land registry of the property's status as a "classified property" or "property in the process of being classified".

Considering the transfer of property rights, these protection rules include:

(i) the prior written communication to the Directorate General of Cultural Heritage of the sale, the establishment of another right *in rem* to use the property, or the payment-in-kind for the building; and

(ii) the co-owners, the State, the Autonomous Regions and the Municipalities have, in the order indicated, the right of pre-emption in the case of sale or payment in classified properties or properties in the process of being classified, or properties located in the respective protection zone (a 50-metre buffer area around the property).

Project development or the change of use of historic buildings must comply with the territorial urban plans in force and during the licensing procedure before the competent authorities, opinions issued by the General Authority of Cultural Heritage must be obtained.

12.8 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?

There is no public register of contaminated land in Portugal. In fact, although the prevention of emissions into the soil is covered by some environmental procedures such as environmental licensing and the environmental impact assessment, there are no specific laws concerning contaminated land (see question 12.9). Considering the absence of regulation on this matter, the Portuguese Environment Agency recommends that, in the case of the transfer of property of a land where potentially polluting activities were carried out, or where there are signs of contamination, a technical quality assessment be carried out.

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

The Legal Framework on Liability for Environmental Damage (Decree-Law 147/2008 of 29 of July, "Environmental Liability Law") establishes environmental liability rules designed to repair significant damage caused to the environment itself. This damage includes: (i) damage caused to protected species and natural habitats; (ii) damage to water; and (iii) damage to the soil, which corresponds to any soil contamination that creates a significant risk to human health. When an operator causes or is in imminent danger of causing these types of damage, this legislation requires the adoption of preventive and/or remedial measures, and their payment by the operator in question.

Pursuant to the General Framework of Waste Management (Decree-Law 102-D/2020 of 10 December), if the Environmental Liability Law does not apply, every operation for the remediation of the soil requires a specific licence and all prevention and remediation costs are borne by the operator. Under the above framework, the obligation to remediate the soil only applies when soil excavation works must be carried out.

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

As of January 2009, all buildings must necessarily be awarded a valid EC; this is a legal requirement for all properties sold in Portugal. The EC is a document issued by the Agency for Energy ("*Agência para Energia*" or "ADENE") within the National Energy Certification System ("SCE") that assesses the energy performance of the property through a graded classification system of A to F. This makes it possible to identify properties that are more energy efficient, under Decree-Law 101-D/2020 of 7 December (see question 13.1 below).

Operators carrying out their activity in installations classified as an energy-intensive consumers (with an annual energy consumption exceeding 500 tonnes of oil equivalent per year) are exempt from the EC. Nonetheless, these operators are subject to compliance with certain obligations relating to the energy performance of buildings, under Decree-Law 71/2008. These obligations include (i) carrying out energy audits of the facilities, (ii) preparing the energy consumption rationalisation plans based on the audits, and (iii) implementing and complying with the approved energy consumption rationalisation plans.

13 Climate Change

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

The development of the key policies to combat climate change is based on fundamental principles of environmental law; in particular, the principle of sustainable development, the "polluter pays" principle and the principle of intergenerational solidarity.

Specifically, to combat climate change, the goals established are a reduction in greenhouse gas emissions, a strengthening of the capacity for carbon dioxide sequestration and adaptation to predicted climate change impacts.

There are important planning instruments to achieve these goals:

- the European Climate Law (Regulation (EU) 2021/1119 of 30 June) establishes the framework for achieving climate neutrality in the EU by 2050, which entails zero balance between the emissions of greenhouse gases and their removal;
- the National Energy and Climate Plan 2030 ("PNEC 2030"), which arose in the context of the Regulation of the Union's Governance for Energy and Climate Action, establishes policies for decarbonisation of the economy, energy efficiency and energy transition, and goals for sectors to reduce greenhouse gas emissions;
- the Roadmap for Carbon Neutrality 2050 ("RNC 2050"), approved by Council of Ministers Resolution 107/2019 of 1 July, aims to reach carbon neutrality by 2050;
- the National Strategy to Adapt to Climate Change, approved by Council of Ministers Resolution 56/2015 of 30 July and extended until 31 December 2025 by Council of Ministers Resolution 53/2020 of 10 July, seeks to adopt solutions to adapt various sectors to the effects of climate changes (e.g., agriculture, forestry and transport);

- the Action Programme to Adapt to Climate Changes, approved by Council of Ministers Resolution 130/2019 of 2 August, was created for the specific implementation of the adaptation measures set out in the National Strategy to Adapt to Climate Change; and
- the National Roadmap for Adaptation 2100 is still under development and will carry out an evaluation of Portugal's vulnerability to climate change and will define the guidelines in order to plan the territorial adaptation and adaptation of the different sectors to climate change.

Furthermore, there is legislation that addresses the emission of greenhouse gases and seeks to achieve the established goals:

- Law 98/2021 of 31 December, which defines the grounds for climate legislative politics and acknowledges the existence of a climate emergency, setting forth an ambitious and transversal approach to climate change. Several instruments are provided for to prevent and adapt to climate change, including tax, monitoring by specific bodies, etc.
- Decree-Law 15/2022 of 14 January, which governs the organisation and operation of the National Electric system and the promotion of the use of renewable energy sources.
- Decree-Law 12/2020 of 6 April, which establishes the framework for the trading of licences for the emission of greenhouse gases.
- Decree-Law 145/2017 of 30 November, which incorporates into Portuguese law Regulation (EU) 517/2014 of 16 April, to reduce the emission of greenhouse gases, by regulation, for example, of the use of equipment containing such gases.
- Ministerial Order 325-A/2021 of 29 December, which establishes the incentives in connection with decarbonisation of the industry sector, energy efficiency and energy transition, within that sector.

Specifically concerning real estate, the reduction of carbon emissions through energy efficiency policies is also present in Portuguese legislation as buildings represent 30% of the carbon emissions in Portugal. Adding to the legislation covered insofar, Decree-Law 68-A/2015, implementing Directive 2012/27/EU, sets forth specific rules on energy efficiency on buildings owned by non-small and medium-sized enterprises. The scheme provided for in this Decree-Law determines an obligation of registration near the Directorate-General of Energy and Geology and an obligation to run certified energy efficiency audits, the results of which are then communicated to said Directorate-General. Also, as mentioned in question 12.10, Decree-Law 71/2008 created an energy efficiency policy in an energy-intensive industry and its respective industrial buildings. This scheme provides for some tax benefits, especially in oil and gas energy sources, provided energy efficiency measures are implemented under agreements to be executed between the owner of the enterprise and the Directorate-General. Recently, Decree-Law 64/2020, implementing Directive 2018/2002/EU, provided for additional energy efficiency measures, mainly in the State's buildings.

13.2 Are there any national greenhouse gas emissions reduction targets?

The European Climate Law (Regulation (EU) 2021/1119) defines that climate neutrality should be reached by 2050. To achieve this purpose, a goal is set for 2030 to reduce greenhouse gas emissions at the EU level of at least 55% (compared to the 1990 levels). This law followed the Green Deal, approved in December 2019, and is an increase to previous targets, which were to reduce GHG by at least 40% until 2030.

In line with this goal, "Fit for 55", a package of proposals was recently published through the Communication from the Commission of 14 July 2021. It proposes a comprehensive set of measures to ensure that GHG emissions are reduced to at least 55% by 2030 (compared to 1990 levels). The proposed amendment to the Effort Sharing Regulation (Regulation (EU) 2018/842) sets forth that between 2023 and 2030, Portugal shall reduce 28.7% of GHG emissions (compared to 2005 levels), representing an aggravation of more than 10 percentage points in relation to the current goal of 17% reduction.

These proposals are to be inserted into legal texts, which may affect the Portuguese legislation. Other legislation is expected to be published in the meantime that will lead to changes to these goals.

Currently, in Portugal, the main planning instruments that define the strategies to promote a transition to a low carbon economy, to meet national targets for the reduction of greenhouse gas emissions and to promote carbon sequestration by forestry and other land uses are the PNEC 2030 and the RNC 2050.

The PNEC 2030 – which was approved before the new European Climate Law was enacted – establishes that the reduction of the emission of greenhouse gases must be between 45% and 55%, by reference to 2005. Additionally, the PNEC 2030 sets sectoral targets for the reduction of greenhouse gas emissions, by reference to the emissions recorded in 2005: 70% for services; 35% for the residential sector; 40% for transport; 11% for agriculture; and 30% for the waste and industrial wastewater sector.

The RNC 2050, a long-term strategy for carbon neutrality of the Portuguese economy, concludes that carbon neutrality by 2050 is economically and technologically feasible, and is based on an emission reduction of between 85% and 90% by 2050 compared to 2005 and on an offsetting of the remaining emissions through the sinks provided by land use and forests. The path to neutrality anticipates reductions in greenhouse gas emissions between -45% and -55% in 2030 and between -65% and -75% in 2040, in relation to 2005.

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

There are some regulatory rules that are intended to improve or to contribute to the improvement of the sustainability of both newly constructed and existing buildings. Firstly, the Legal Framework of Urban Development and Building dispenses with the prior control of urban development operations considered to be of little relevance, such as the installation of solar photovoltaic panels or wind generators associated with the main building for the production of renewable energy and of solar thermal collectors for heating sanitary waters. The same applies to the replacement of external cladding or roofing materials by others that, by providing an external finish identical to the original, promote energy efficiency.

Furthermore, in works subject to licensing or prior notice under the terms of the Legal Framework of Urban Development and Building, the producer of construction and demolition waste is obliged to promote the reuse of materials, the incorporation of recycled materials and the recovery of waste that may be used in the work. In turn, in public works contracts and concessions, the execution project is accompanied by a Plan for the Prevention and Management of Construction and Demolition Waste ("PPGRCD"), which ensures compliance with the general principles for the management of construction and demolition of waste and other applicable regulations. In these cases, the contractor or concession holder is responsible for implementing the PPGRCD by ensuring the promotion of the reuse of materials and the incorporation of recycled materials in the construction work.

Another piece of legislation of importance regarding this matter is the one applicable to the rehabilitation of buildings or autonomous units, set out in Decree-Law 95/2019 of 18 July. This legislation is intended to protect and value pre-existence, environmental sustainability, and proportional and progressive improvement. In fact, environmental sustainability is one of the main principles that should inform the activity of rehabilitating buildings. The rehabilitation of buildings contributes to environmental sustainability by increasing the useful life of buildings and favours the reuse of construction components, the use of recycled materials, the reduction of waste production, the use of materials with reduced environmental impact, the reduction of greenhouse gas emissions, the improvement of energy efficiency and the reduction of energy needs, including energy incorporated in the construction itself, as well as the use of renewable energy sources.

In an effort to reduce bureaucracy, the Government plans to approve a procedure to facilitate processes in certain types of private projects (e.g., renewable energy, water collection infrastructures, logistic platforms), by eliminating the need for redundant licensing acts. The Government also expects to extend this to other areas, including planning and zoning, industry, retail, services and agriculture.

Regarding this matter, there is also the SCE. In combination with Decree-Law 101-D/2020 of 7 December, this establishes the requirements applicable to buildings for improving their energy performance. They are applicable and mandatory for both new buildings and renovations of existing buildings. The energy certification of buildings is intended to support owners in identifying opportunities to improve buildings and implement them, and there are even financial support programmes granted in this context. Certain properties are subject to specific mandatory requirements, such as office buildings or large commercial premises whose area exceeds 1000 square metres, in which case they will be subject to regular evaluations of their air quality every eight years and must keep a specific and updated maintenance plan regarding their air conditioning infrastructures.

Finally, in public procurement, both for the purposes of admission and exclusion of candidacies and proposals, and for the purposes of their evaluation and classification, special importance is given to environmental aspects. In other words, it is desirable for the minimum qualification requirements for candidates, and the factors that define the award criteria and the binding aspects of the specifications of the procedures to reflect, consider and value environmental concerns relating to the object of the contract to be signed. Moreover, the National Action Strategy for Green Public Procurement also establishes goals and objectives for the administration with regard to the introduction of environmental criteria in the procedure for the acquisition of goods and services by the State.

14 COVID-19

14.1 Please detail any laws that govern real estate in your jurisdiction which were introduced in response to the effect of the Coronavirus (COVID-19) pandemic and which remain in place.

In the context of the COVID-19 pandemic, exceptional and temporary measures have been adopted to protect tenants from its effects, most of which are no longer in effect.

Nonetheless we highlight some that should still be considered:

- Law 4-C/2020 of 6 April, which established, regarding non-housing purposes leases, a deferment of rentals:
  - in the months in which the state of emergency was in force and in the first month thereafter;
  - in the months in which, pursuant to a legal provision or administrative measure approved in the context of the COVID-19 pandemic, the closure of its facilities or suspension of its activity was determined; and
  - in the three months following the month in which the imposition of the closure of its facilities or suspension of its activity was lifted.

  In these cases:
  - the deferral could not, in any case, apply to rents falling due after 31 December 2020; and
  - the debt settlement period began on 1 January 2021 and lasts until 31 December 2022.
- The State Budget Law for 2020, which established that in cases where specific forms of property operation contracts were applicable for retail and services in shopping centres, no values by way of minimum rent were due until 31 December 2020. The only amount due to the shopping centre owners was the variable rent component, calculated on the sales made by the tenant. The responsibility, on the part of the tenants, for the payment of all expenses contractually agreed, including those relating to common charges and expenses, remained in place. By a decision issued on 28 June 2022, the Constitutional Court declared the partial unconstitutionality of the relevant provision of the State Budget Law for 2020 to the extent it establishes an exemption from the fixed/minimum remuneration due by tenants in shopping centres higher than a reduction proportional to the reduction of the monthly invoicing. This exemption cannot exceed 50% of the fixed/minimum remuneration and only applies when the store in question suffers a decrease in its sales volume, by reference to the corresponding month of 2019 or, in the absence of that, the average of the six months preceding the declaration of the state of emergency or a shorter period, when applicable. The application of these rules to each specific case will depend on the analysis of the applicable contractual framework.
- Decree-Law 66-A/2022 of 30 September, which established that:
  - scanned copies and photocopies of acts and contracts have the same probatory force as originals, except where the person to whom they are presented requests the presentation of the original; and
  - scanned copies of acts and contracts can be signed in handwriting or by means of a qualified electronic signature, which will not affect their validity, even if different forms of signature coexist in the same act or contract.

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