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7. THE FUTURE OF IBERIAN PROPERTY MARKET
Why Invest in Iberia?

Winston Churchill, once said: “success is not final, failure is not fatal - it is the courage to continue that counts.” This could prove to be the case of the evolution of the real estate market in the Iberian Peninsula from 2007 to the present. Spanish and Portuguese real estate market players considered themselves invincible and eternal in 2007 with the same obstinate passion and disregard for reality as they later felt the most despicable and failed dealmakers in the long and painful years from 2009 to 2013. Neither the pre-crisis success was only thanks to their adroitness and prowess at the time, nor were the subsequent failure and misery solely due to their mischiefs. Fortunately, both before and after the low water mark of the crisis in the Iberian property market, the courage, wholeheartedness and determination of some visionary players, laid the foundations of what can now be seen and judged, without bias or exaggeration, as a resounding recovery.

Success is not final, failure is not fatal - it is the courage to continue that counts.  
- Winston Churchill

The Iberian property market has now regained the strength and vitality it once enjoyed, yet with more cautious and sound leverage and operating ratios than in the years immediately preceding the crisis. Leverage ratios are well under 60% LTVs, affordability rates steadily increase, vacancies shrink and all types of real estate are being managed with more skill and professionalism than in the old days. Throughout this long 10-year period, the real estate community members have done their best to make this trend crystallise. Indeed, some of the most powerful drivers of the change have demanded the joint action and effort of multiple parties: public authorities, the financial community, real estate investors, developers, brokers and consultants and last, but not least, lawyers.

Both Cushman & Wakefield and Uría Menéndez have contributed significantly to the change. We were present in the creation and development of the “SOCIMI” (or REIT), which was only 3 years ago, but has already proven to be a very strong dynamo in the market; in the design, implementation and expansion of such a large Spanish real estate market player as SAREB; in the transfer of very large mortgage-backed loan and property portfolios from the financial sector back to the real estate sector; in the flotation or private placement of so many real estate portfolios in Portugal and Spain... We are proud of this but, at the same time, determined and committed to continue adding value, fostering innovation and enhancing best practices in order to consolidate the Iberian real estate market as a whole.

We believe this is a good moment to X-ray the sector, from an economic, legal and tax perspective, with a view to deepening its transparency and efficiency. What follows combines a look at the market and its future profile from Cushman & Wakefield’s expert teams, with a thorough analysis by Uría Menéndez of the legal and tax framework in which real estate is developed, operated, leased and transacted in Spain and Portugal.

We very much hope this guide proves helpful, both to the new and the established players.
1. ECONOMIC OVERVIEW
A New Dawn Breaks in Iberia

The recovery of the Spanish and Portuguese economies is in full swing, with corporate investment approaching a 5-year high in both markets, foreign direct investment up strongly and property investor interest only held back from record-breaking levels by a lack of suitable opportunities.

But is this just a bounce from the agonies endured in the years of the Eurozone financial crisis or a sustained improvement? Clearly, there are challenges ahead for both countries with a need for further reform to boost productivity, cut debt and tackle emerging demographic and environmental issues, as well as to harness technological change. However, they are far from alone. In addition both countries have made a strong start, which is already reaping rewards in the labour market and in their capacity to attract business and investment.

While tourism, climate and history have always been key drivers of interest and activity in the Iberian Peninsula, investors are also now recognising the area for its growth opportunities, as structural reforms cut unemployment and provide a springboard for both improved and sustained economic performance.

Expanding levels of economic activity, including faster business infrastructures and tourism investment, are feeding through to the real estate market in both countries, resulting in stronger rental growth, led by rising demand as well as falling supply.

Nonetheless, the two countries are clearly at a different stage of economic recovery and hence Iberia presents a two-pronged growth dynamic, combining Spain as one of the fastest growing economies in Europe, with Portugal’s steady, less volatile growth forecast.

Spain continues to be at the front of the queue attracting FDI flows, with an increasingly competitive environment and favourable tax rates appealing to investors. New measures allowing companies to operate throughout Spain’s 17 regions with a single licence have furthered the country’s accessibility, openness and appeal.

At the same time, Portugal’s capital city is undergoing an entrepreneurial revolution. It has established a high success rate of start-ups and has by now attracted a growing tech cluster, with the city named European Entrepreneurial Region of the Year in 2015. The good news is spreading to other urban areas led by Porto.

It’s not just a tech story however: a wide range of business sectors are benefitting - and hence the impact can be seen across the Iberian real estate market, including the residential and hospitality sectors and increasingly alternative growth markets, such as student housing.

Hence while the Iberian Peninsula struggled in the years of the financial crisis, both Spain and Portugal have emerged on the other side as stronger market players with reforms improving the resilience and outlook for both. Indeed, with mounting confidence on the back of government efforts to sustain this performance, Iberia will continue to catch the eye of investors.

David Hutchings
International Partner, Head of Investment Strategy
EMEA Capital Markets
## Economic Indicators - Portugal

<table>
<thead>
<tr>
<th></th>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Public Consumption</td>
<td>-2.0%</td>
<td>-0.5%</td>
<td>0.7%</td>
<td>0.5%</td>
<td>0.8%</td>
<td>0.8%</td>
<td>0.7%</td>
<td>0.6%</td>
</tr>
<tr>
<td>Private Consumption</td>
<td>-1.2%</td>
<td>2.3%</td>
<td>2.6%</td>
<td>2.3%</td>
<td>1.9%</td>
<td>1.2%</td>
<td>1.0%</td>
<td>0.9%</td>
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<tr>
<td>Exports</td>
<td>7.0%</td>
<td>4.3%</td>
<td>6.1%</td>
<td>4.4%</td>
<td>3.7%</td>
<td>2.3%</td>
<td>2.1%</td>
<td>2.0%</td>
</tr>
<tr>
<td>GDP</td>
<td>-1.1%</td>
<td>0.9%</td>
<td>1.6%</td>
<td>1.4%</td>
<td>1.7%</td>
<td>1.2%</td>
<td>1.1%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Imports</td>
<td>4.7%</td>
<td>7.8%</td>
<td>8.2%</td>
<td>4.4%</td>
<td>3.9%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.1%</td>
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<tr>
<td>Unemployment rate</td>
<td>16.2%</td>
<td>13.9%</td>
<td>12.4%</td>
<td>11.1%</td>
<td>10.0%</td>
<td>9.1%</td>
<td>8.5%</td>
<td>8.2%</td>
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</tbody>
</table>

## Economic Indicators - Spain

<table>
<thead>
<tr>
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<tr>
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<td>-0.3%</td>
<td>2.0%</td>
<td>0.8%</td>
<td>0.6%</td>
<td>1.0%</td>
<td>1.2%</td>
<td>1.2%</td>
</tr>
<tr>
<td>Private Consumption</td>
<td>-3.1%</td>
<td>1.6%</td>
<td>2.9%</td>
<td>3.2%</td>
<td>2.5%</td>
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<td>1.7%</td>
<td>1.6%</td>
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<tr>
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<td>4.2%</td>
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<td>4.1%</td>
<td>3.5%</td>
<td>3.1%</td>
<td>3.0%</td>
</tr>
<tr>
<td>GDP</td>
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<td>1.4%</td>
<td>3.2%</td>
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<td>2.8%</td>
<td>2.2%</td>
<td>2.0%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Imports</td>
<td>-0.5%</td>
<td>6.5%</td>
<td>5.6%</td>
<td>3.3%</td>
<td>3.0%</td>
<td>3.3%</td>
<td>3.4%</td>
<td>3.4%</td>
</tr>
<tr>
<td>Unemployment rate</td>
<td>26.1%</td>
<td>24.4%</td>
<td>22.1%</td>
<td>19.6%</td>
<td>17.4%</td>
<td>15.9%</td>
<td>14.9%</td>
<td>14.4%</td>
</tr>
</tbody>
</table>

Source: Oxford Economics
2. THE IBERIAN PENINSULA

The Iberian Peninsula is located on the south-western edge of Europe, bordering France to the north, the Atlantic Ocean to the west and the Mediterranean ocean to the south and east. Portugal and Spain occupy the majority of its territory.

Portugal is located on the southwest of the Iberian Peninsula; it borders the Atlantic Ocean to the west and south and Spain to the north and east, comprising also the archipelagos of the Azores and Madeira.

The country has a total population of 10.34 million, Lisbon is the capital of Portugal and its largest city with around 500,000 inhabitants (2.81 million in Lisbon Metropolitan Area). Portugal’s second largest city is Porto, in the north with around 220,000 inhabitants (1.72 million in Porto Metropolitan Area).

Portugal is a democracy. Its sovereign bodies are the President of the Republic, Assembly of the Republic, Government and the Courts. The current President of the Republic, elected for a 5-year term, is Marcelo Rebelo de Sousa. Elections for the 230 deputies of the Assembly of the Republic are held every 4 years and are followed by the appointment of the Prime Minister (currently António Costa) who then forms the government (currently a left-wing coalition).

Portugal has been a member of the European Union since 1986 and was a founding member of NATO (North Atlantic Treaty Organization) in 1949. It has been a member of the United Nations since 1955.

The Kingdom of Spain includes 17 autonomous regions and two autonomous cities, with diverse geography and cultures.

The country has a total population of 46.47 million inhabitants.

The capital Madrid is the largest city with around 3 million inhabitants (the Madrid region has almost 6.4 million inhabitants). The second largest city is Barcelona, with 1.6 million inhabitants (the region of Catalonia has nearly 7.5 million inhabitants).

Spain is a constitutional monarchy with a bicameral parliament, the Cortes Generales. The legislative branch is made up of The Congress of Deputies, with 350 members elected by popular vote. Spain’s Council of Ministers is presided over by the Prime Minister, Mariano Rajoy, the leader of the conservative Partido Popular.

Spain’s economy is the 16th largest worldwide, the 5th largest in the European Union and the Eurozone’s 4th largest.

In 2016, Spain was the third most visited country in the world, recording 75.3 million tourists. This marked the fourth consecutive year of record-breaking figures.

Spain has been a member of the European Union since 1986 and a member of the Eurozone since 1999.

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Sourced by National Statistics Institute
3.
PORTUGUESE PROPERTY MARKET

3.1 Offices

Lisbon office market
The office market mainly revolves around the cities of Lisbon and Porto. Lisbon is the core location for office property in the country, it has grown in importance since the 1990s and has a current supply of more than 4.45 million sq.m. divided into 7 zones.
Zones 1 and 2 form Lisbon’s central business district, or CBD. Zones 3 and 4, although within the perimeter of the Lisbon municipality, occupy a secondary position but are generally within a 10-minute drive from the city centre and benefit from public transportation. Zone 5 (Parque das Nações) is located in Lisbon’s north-eastern zone and is the capital’s office market showcase. Zone 6, known as the Western Corridor, is the out-of-town location on the motorway to the high-end residential areas of Cascais and Oeiras. Zone 7 comprises good quality office buildings not located within the six defined geographic zones.

Average annual take-up in Lisbon is around 140,000 sq.m. Maximum demand for office space reached its peak in 2008, at more than 240,000 sq.m. in transactions. After being hit hard by the economic crisis in 2009, growth resumed in 2014, and in 2015 and 2016 take-up volume stood slightly above the period average.
Porto office market

Total office space in Greater Porto – comprising purpose-built office buildings located in the municipalities of Porto, Maia, Matosinhos and Vila Nova de Gaia – is close to 1.5 million sq.m. of GLA across more than 400 buildings. Porto municipality accounts for the lion’s share of supply with around 800,000 sq.m. or 55% of total office space across more than 200 buildings.

Up to 2014, demand for office space in Greater Porto was essentially driven by domestic occupiers, with an estimated annual take-up of 15,000 sq.m. to 20,000 sq.m.. A new source of demand of international occupiers who consider Greater Porto as an alternative for establishing shared services centres and IT companies, emerged at the end of 2014. Estimates are for an annual level of demand of 30,000 sq.m. to 40,000 sq.m. in 2015 and 2016.

Rents

Lisbon’s prime rent, at Q1 2017, was €19/sq.m./month, showing the start of a recovery after a decrease from 2009 to 2013. In Greater Porto, prime rent stands currently at €16/sq.m./month.

A long series of market analysis evidences the stability of rents in the Lisbon and Porto markets, over the course of more than 20 years. A comparison between prime rent fluctuations in other European capitals indicates a high degree of stability and hence lower volatility.

A new source of demand emerged at the end of 2014 with international occupiers considering Greater Porto as an alternative for establishing shared services centres and IT companies.
3.2 Retail

The retail sector has, since the 1990s, been the most dynamic sector in the property market in Portugal. Many modern shopping centres have been developed successfully, to cater for retailers keen to tap into the increasingly demanding consumer. Thanks to best-in-class design, leasing and management practices, Portuguese shopping centres have attracted much foreign investment.

Modern retail space (shopping centres, retail parks and factory outlet centres) in Portugal as at Q1 2017, amounted to more than 3.65 million sq.m. Shopping centres represent over 81% of the total supply, with circa 3 million sq.m. Retail parks total ca. 480,000 sq.m. and factory outlets centres around 220,000 sq.m. While almost all district capitals in the country feature at least one modern shopping centre, most of the GLA is concentrated in Lisbon and Porto - the Greater Lisbon region around 1 million sq.m., and Greater Porto circa 780,000 sq.m.

Development activity reduced substantially in recent years as a result of the maturity of the market, on the one hand, and the lack of finance for new development, on the other. New supply in 2016 and 2017 comprise essentially two large centres, one in Braga, in the north, and one in the Algarve.
High Street Retail
After decades of stagnation, resulting largely from an antiquated, tenant-protective lease law which hindered modernisation, the high street retail scene has become a very dynamic market in recent years, fuelled by a combination of a major overhaul of landlord and tenant legislation, improving consumer sentiment after the economic crisis, and ever-increasing tourist numbers. While retailer interest was initially focused mainly on the prime Lisbon locations of Liberdade, Baixa and Chiado, this is now extending to Portugal’s second city, Porto, where the Clérigos area and the Rua de Santa Catarina are in high demand.

Overall supply in Lisbon city centres stands at circa 224,000 sq.m., whereby the three prime retail locations referred above represent 77%, and other retail clusters, such as Praça de Londres, Campo de Ourique, Príncipe Real or Cais do Sodré the remainder.

The city of Porto offers a total of 191,000 sq.m. of retail area in its prime retail locations in the city center: Baixa (downtown Porto), Clérigos, Boavista and Cedofeita.

Rents
Portuguese retail rents are extremely competitive in a European context and have proved to be more stable in many cases. Prime shopping centre rents are currently of the order of €97.50 sq.m./month, and high street rents €105/sq.m./month.

<table>
<thead>
<tr>
<th>Format</th>
<th>Prime</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shopping Centre</td>
<td>€97.50</td>
<td>€27.50 - €30.00</td>
</tr>
<tr>
<td>Retail Parks</td>
<td>€10.00</td>
<td>€7.00 - €9.00</td>
</tr>
<tr>
<td>High Street - Lisbon (Chiado)</td>
<td>€105.00</td>
<td>€40.00 - €50.00</td>
</tr>
<tr>
<td>High Street - Porto (Rua de Sta. Catarina)</td>
<td>€57.50</td>
<td>€25.00 - €30.00</td>
</tr>
</tbody>
</table>

EUROPEAN PRIME SHOPPING CENTRE RENTS

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IBERIAN REAL ESTATE INVESTMENT GUIDE 2017
3.3 Industrial

The industrial market in Portugal is a relatively smaller and somewhat less sophisticated market than the other sectors, with fewer international operators, particularly in terms of investors and developers. In recent years however, this gap has been closing with a number of foreign investors acquiring property in the logistics sector.

The Greater Lisbon Region concentrates the most sought-after industrial locations. It is split into 6 zones, as shown in the following map.

In recent years a number of foreign investors acquired property in the logistics sector.
The Lisbon Metropolitan Area has around 12 million sq.m. of industrial and logistics space. Modern logistics space accounts for only about 23% of this, or 2.8 million sq.m.

Greater Lisbon’s industrial rent levels in Portugal are also among the lowest in Europe, currently at €3.50/sq.m./month.
3.4 Tourism

Tourism is undoubtedly one of Portugal’s main sectors of economic activity, generating more than 10% of the country’s GDP. Tourist accommodation in Portugal at the end of 2016 exceeded 78,000 rooms over around 2,130 establishments, while the current pipeline of projects shows an additional 73 hotels totalling around 5,600 rooms expected to be delivered by 2019. Greater Lisbon concentrates the majority of supply, followed closely by the Algarve, the main sun & beach destination in the country. Porto, in the north, and the Azores islands have of recent become more popular with tourists and hence hold the greatest growth potential.

The tourism sector in Portugal shows a spectacular upward trend since 2013: according to Portuguese National Office for Statistics the number of visitors in 2016 was up year-on-year by 9.8%, to 19.1 million, while the number of overnight stays stood at over 53.5 million - 9.6% up on 2015. Hotel revenues totalled more than €2,900 million, an impressive 17% year-on-year increase, while the RevPAR\(^1\) was up 13.4% to €42.3.

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\(^1\) Average revenue per available room
3.5 Investment Activity

Until the turn of the century, the property investment market was relatively small and dominated by local property funds. This changed when Portugal joined the Euro, eliminating foreign exchange risk, and opening the market to foreign investment. Volumes in the early years were still modest and peaked at the height of the previous property boom, with transactions totalling €1,200 million in 2007.

The global financial crisis hit Portugal particularly hard and volumes fell to very low numbers, picking up quickly, however, in 2014 following Portugal’s successful, “clean” exit from the financial assistance programme. The 2015 volumes of almost €2,000 million broke the all-time record and 2016 also saw substantial amounts of activity, with 2017 starting equally strongly.

Currently the type of market players is more diversified than ever, in terms of nationality, preferred asset class, lot size and risk profile. Foreign investors, ranging from core/core-plus institutions to value-add/opportunistic private equity funds, dominate the large retail, office and portfolio transactions, while domestic investors are typically more interested in office and industrial assets, smaller retail property and urban reconversions.

Retail and office space are still the sectors most in demand. A certain level of investment in the industrial sectors has been observed since the start of this decade, as well as several one-off deals involving hotels and educational facilities.
3.5.1 Foreign Investment In Property

The property investment market in Portugal came on to the radar of foreign investors when Portugal joined the fixed exchange rate mechanism in 1999. The market was perceived as offering high quality real estate at good value in a European context, as a result of both low rents and high yields.

Since the turn of the century, around €7,000 million have been invested by foreign investors in the Portuguese property market, 59% of the total investment in commercial property in Portugal. This figure could have been higher as the supply in the Portuguese market was often simply not large enough in terms of number, quality and/or scale, to meet the demand.

Most foreign investment has been made in the retail sector - 53% of the total, circa €3,600 million - and almost invariably in medium and large shopping centres, which are typically too large for local investors. Foreign investors have also targeted the larger prime office assets, with lot sizes in excess of €20 million.

Portugal continues to feature on the shopping list of several of the most important international investment houses, who seek to effectively diversify risk and achieve higher income returns than those from mature markets, in a country offering security, transparency and less competition.
3.5.2 Property Investment Funds Industry

The property investment funds industry in Portugal dates back to 1987, when the activity of property investment funds in Portugal became regulated. The industry in Portugal has, as of January 2017, around €10,500 million in assets under management, in more than 233 open and closed-ended funds, managed by 28 asset management companies.

Notwithstanding the number of active funds, there is a high degree of concentration in this industry and the top three management companies account for more than 35% of the assets under management, at around €3,700 million. Millennium BCP Group asset manager Interfundos has the largest market share, at 13.1%, followed by independent manager Norfin and Caixa Geral de Depósitos asset management company, Fundger. Closed-ended funds represent the majority of the industry - 62% of the total volume under management by Portuguese real estate investment funds.

An analysis by sector shows the dominance of the offices market, with current total allocations of around €3,390 million, representing 36.7% of the total assets under management by Portuguese property investment funds. However, the proportion invested in this sector has been gradually reducing since the end of 2005, essentially due to the increase in residential and other assets such as parking, hotels or health and educational facilities. Since the end of 2007, a significant increase in the residential sector was noted, currently around €1,450 million of assets under management, as a result of the creation of regulated vehicles called “Property Investment Funds for Residential Rentals”. Retail is underrepresented in the Portuguese fund industry, at just €1,760 million.

Local property investment funds are mainly focused on the office sector and less so on retail.
3.5.3 Capital Values

From a high of 10% in the 1990s, prime yields hardened in the run-up to the previous peak in 2007, to around 5%. During the ensuing global financial crisis, which hit Portugal particularly hard, yields softened and capital values decreased substantially. Today yields have come full circle and are generally at or even below the previous peak level, driven by an improved economy and business confidence, on the one hand, and large amounts of liquidity, on the other.

Risk premium on property yields - as measured by the spread against Portuguese bond yields - shows a contraction since 2015. However, some further narrowing may still occur, given that the historic minimum of 151 basis points in 2007 has not yet been achieved. We do not foresee further major yields shifts although some contraction may still happen.

**PORTUGAL - PRIME YIELDS VS PORTUGUESE BOND YIELDS**

*Source: Cushman & Wakefield; Oxford Economics*
Today yields have come full circle and are generally at or even below the previous peak level, driven by an improved economy and business confidence.
### 3.6 Market practices

#### GENERAL

<table>
<thead>
<tr>
<th>DOCUMENT</th>
<th>A standard lease contract is drawn up and signed by the relevant parties. For shopping centres “use of shop agreement” is signed by relevant parties.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENFORCEABILITY OF LEASE</td>
<td>Leases are legally binding on both parties.</td>
</tr>
<tr>
<td>RESTRICTIVE USER CLAUSES</td>
<td>Not usually.</td>
</tr>
</tbody>
</table>

#### BROKER’S FEES

**LEASING**

Tenant: Negotiable.  
Landlord: Agency fee typically 15% of first year’s gross rent (excluding any discounts or rent-free periods) plus incentives.

**SALES**

Asset value up to €10m: 1% to 3%  
Asset value in excess of €10m: 0.25% to 1%

#### LEASE TERMS

<table>
<thead>
<tr>
<th>DURATION OF LEASE</th>
<th>OFFICE Typically 5 years.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Logistics</td>
<td>Typically 3 years.</td>
</tr>
<tr>
<td>RETAIL</td>
<td></td>
</tr>
<tr>
<td>High street</td>
<td>Typically 5-10 years.</td>
</tr>
<tr>
<td>Shopping centres</td>
<td>6 years for shopping centre shop units, 10-15 years for anchor stores.</td>
</tr>
</tbody>
</table>

**BREAK OPTIONS**

Old leases: No break option.  
New leases: Freely negotiated between parties – Usually 180 days' notice for both parties in advance of break options or lease term.  
Shopping centres: Traditionally, there are no break options except for anchor stores which may have a break option after 5 or 6 years.

**SERVICE CHARGES, REPAIRS & INSURANCE**

**REPAIRS**

Tenant: Internal repairs.  
Landlord: External repairs and maintenance.

**INSURANCE**

Tenant: Contents insurance.  
Landlord: Building insurance.

**UTILITIES INCLUDED IN SERVICE CHARGE**

Paid by the tenant.

**SERVICE CHARGES**

Common use utilities – Security, maintenance and cleaning of common areas.

#### MEASURING CODE

**MEASUREMENT PRACTICE**

Office Gross Lettable Area.  
Industrial Gross Lettable Area.  
Retail Gross Lettable Area.

**MINIMUM WORKSPACE PER EMPLOYEE (market practice)**

10 sq.m. per workstation.

**SECURITY OF TENURE**

Old leases: The tenant enjoys automatic security of tenure.  
New leases: Freely negotiated between parties.

**PREMIUM/KEY MONEY**

No longer a common practice, except for smaller units in prime shopping centres and prime high street shops.

**TURNOVER RENTS**

Only retail, notably in shopping centres.

**TENANT LIABILITY**

None, following the end of the lease. The tenant is responsible for reinstating the premises with the exception of wear and tear.
4.
SPANISH PROPERTY MARKET

4.1 Office

4.1.1 Barcelona

The vacancy rate in Barcelona’s office market peaked in 2010, when it exceeded 14%. Between 2009 and 2010, more than 300,000 sq.m. of newly available office space had been added to the stock and since then the overall vacancy rate has moved downwards by 5 percentage points.

In the area of Passeig de Gràcia/Diagonal and the City Centre, the vacancy rate stands at 3% and 4% respectively. Vacancy rates are somewhat higher within the New Business Areas and on the Periphery, standing at over 15%.

Total take-up in Barcelona in 2016 amounted to 320,000 sq.m., some 23.8% lower than the figure for the close of 2015. Demand, however, has shown itself to be at a particularly healthy stage, standing at 9.6% above the average for the last 10 years.

The New Business Areas continue to attract the highest percentage of take-up. 30.2% of the floorspace transacted corresponds to offices there. Lease contracts in the Periphery represent approximately 22.4% of the total volume, whereas 47.4% corresponds to take-up within the City Centre and the Prime zone.

Prime rent in Barcelona stands at €21.5/sq.m./month, some 9% above the figure from 1 year ago. Throughout 2016, 9% of deals were signed between €18 and €21/sq.m./month and for the first time in 4 years we see deals signed at prices above €21/sq.m./month.
Madrid’s vacancy rate climbed to its highest level in 2014, at 18%. The slow pace of delivery of new developments and strong levels of take-up have reduced the vacancy rate to 14.4%. Development activity is, however, returning, some 60,000 sq.m. of new construction being expected for 2017 and 100,000 sq.m. by 2018.

Take-up of office space in 2016 closed at 420,000 sq.m., a figure slightly lower than that for 2015. 40% of transactions entailed space creation, a symptom of the improvement in the employment rate which is beginning to translate into a greater need for floorspace. Deals involving more than 10,000 sq.m. in 2015 represented approximately 30% of take-up. Nevertheless, in 2016 this share fell to 10%, a sign of reduced dependency on major deals in favour of the medium-sized floorspace segment.

The majority of deals took place within the M-30 ring road, whereas the largest deals were located within the Decentralised zone.

Take-up and the strength of demand are moving hand-in-hand with the recovery in microeconomic fundamentals. The foregoing translates into a prime rent which closed the year at €30/sq.m., representing an increase of 5.2% in comparison with the close of 2015.

The increase in rents seen in the prime zone throughout the last year have begun to replicate in a number of sub-markets. These changes may be seen selectively in the better buildings of each zone.
4.2 Retail

The shopping centre sector in Spain may be considered mature. There are currently 412 shopping centres in the country, totalling approximately 11.2 million square metres Gross Lettable Area (GLA). The commercial density in Spain amounts to 245 sq.m./1,000 inhabitants, below the Western European average. In recent years, rental values have remained stable, however the climate of rising retail sales may push rents upwards in 2017. Our estimate of market rent for a retail premises located in a prime centre is €85/sq.m./month. Prime rent for secondary locations would amount to around €45/sq.m./month.

As for the High Street sector, the two most important cities are Madrid and Barcelona. For the former we distinguish two locations when we refer to prime zones:

The Salamanca district: this zone houses the city’s golden mile, most of the luxury and premium brand operators clustering here, especially on the thoroughfares of Calle José Ortega y Gasset and Calle Serrano. Rents on those two streets hover between €220/sq.m./month and €250/sq.m./month.

Barrio Centro: This is the main mass market area, concentrated around the streets Calle Gran Vía and Calle Preciados. The footfall of both local shoppers and tourists in this zone is very significant and retail locations on Preciados boast the highest high street rents in Madrid, at around €265/sq.m./month.

Barcelona’s high street retail market comprises a large area of the urban city centre. The main shopping streets are Passeig de Gràcia, Portal de l’Àngel, Portaferrissa, Les Rambles and Plaza de Catalunya. Portal de L’Angel is a must-have destination for mass market operators and, as a result, holds the honour of being the most expensive street in the country; Rents here reach €280/sq.m./month, though at the start of 2017 availability was non-existent.
4.3 Industrial

In response to the improvement in retail sales, household spending and industrial production, the take-up of logistics space in Madrid registered a total of 410,000 sq.m. in 2016, above the figure of 385,000 sq.m. for 2015.

Demand is focused on the A-2 and A-4 motorways, cornering a third of total take-up each year. In 2016 there were around 40 new occupancy contracts and 6 large transactions above 15,000 sq.m.. Major logistics operators and users are concentrating on logistics hubs, in line with a trend already witnessed in 2015. Since the economic recovery, demand has absorbed the highest quality warehouses and what remains available today in the main areas does not meet the technical specifications sought. This fact is gradually pushing developers to start new speculative schemes. Accordingly, future supply is gaining strength and ending the first quarter of 2017 some 350,000 sq.m. of new construction, including around 100,000 sq.m. of turnkey projects, were under development. The prime rent stands at €5/sq.m./month and the outlook is positive given the scarcity of modern space available and the quality of the units currently under construction.

Barcelona registered an annual increase in take-up of 645,000 sq.m. in 2016 (+17%), exceeding the record of the previous year. Major deals such as Amazon’s new logistics centre in El Prat de Llobregat (+63,000 sq.m.) and Mango in Lliçà (total of 119,000 sq.m.) drove total take-up to new records. The exceptional nature of these types of buildings is worth mentioning, as they will employ new technologies and automation as well as an intensive use of vertical storage. More than 19 lease deals exceeded 10,000 sq.m. in 2016, the main contracts being signed in the Prime area of Barcelona – Baix Llobregat, Camp de Tarragona and El Vallès – representing 65% of total take-up. Prime rent in Barcelona rose to €6/sq.m./month at the close of Q1 2017. Rents in prime areas have increased by 9% and the lack of Triple A product combined with demand pressure may, within the short term, push rents even higher.

The search for space is active in both markets, mainly due to the increase in spending and retail sales. In addition, the strong growth of e-commerce in Spain will promote new occupancy formulas.
Having broken records for foreign visitors year after year since 2010, the Spanish tourism sector is enjoying a period of rising performance and contribution to economic growth. Tourists from abroad are flocking to Spain’s coastal zones and islands and 2016 ended with an all-time record of 75 million overseas visitors. The annual change amounted to +11% and since 2011 some 19 million new tourists have visited the country. Not only are a great many new tourists choosing Spain as their holiday destination, they are also spending more. In fact, the average daily spend per tourist rose in 2016 by 7%, reaching €124.

Within this context, the performance of the hotel sector is improving, with the average monthly occupancy rate climbing from 53% in 2014 to 58% in 2016. During the peak season (July and August), the occupancy rate jumped from 70% to 76% in the same period. This improved performance in terms of occupancy has also impacted on hotel revenues. The minimum average monthly RevPar of 2009 (€35) has risen by 46% to €52. The figures for coastal locations and Madrid and Barcelona are even better. It is consequently no surprise that hotel investment has also recovered and is transforming not only the ownership of the hotel sector in Spain but also its management style. Following acquisitions, new landlords are aiming to add value via refurbishments of buildings as well as by joining up with international hotel operators rather than opting for self-management. This has helped to professionalise the hotel market from a real estate perspective and the strong momentum of this strategy points towards its further implementation in the coming years. In the major cities, urban hotels and buildings suitable for change of use to a hotel are much sought after by investors. At the same time, specialised hotel investors and operators are seeking value-added opportunities in coastal and island hotels.
4.5 Investment

Capital markets have actively shovelled money into the Spanish property markets since the beginning of the recovery back in the summer of 2013. Following almost three years of continuous recovery, the interest in real estate assets in Spain remains intact and 2017 will sustain high levels of liquidity such as those seen during the two previous years. The monetary climate will support such liquidity, as asset purchases from the ECB will linger on until 2018 (though likely with some tapering-off) and the Euro zone benchmark interest rates are not expected to rise significantly in the medium term.

Real estate investment has entered a stage of sophistication steered by the Spanish REITs (SOCIMIs). Following a strong debut in 2014, these investment vehicles have consistently raised equity from institutional investors and private fortunes, mostly of international origin, issued syndicated debt and made a myriad of acquisitions both at asset and corporate levels. This has had profound implications for the market, as their appearance has definitely increased competition for most property assets and has also contributed to changing the profile of landlords in Spain, resulting in a more professional and specialised scope.

Investment activity in the current cycle shows a remarkable trait: low LTV (loan-to-value) ratios. With average LTV ratios of 40% to 50% for real estate purchases, banks remain cautious when financing Spanish real estate, in particular domestic banks still with a considerable share of properties on their balance sheets. Despite having provisioned most of those assets, it is reasonable for banks in that position to be reluctant to increase their property exposure before disposing of what they already have on their books. All in all, although debt providers are far from plentiful, they are open to participating in projects with good income generation via high occupancy, good tenant profiles and contracts and rental values with growth expectations.

The aforementioned competition clearly implies yield compression, as investors are prone to assuming aggressive asset pricing in their bids for the opportunities they identify. Prime yields quickly compress in office and retail assets and ending 2016 the aggregate reduction amounted to some 280 basis points from the peak values in 2013. The landscape of investment strategies has changed as the availability of products suitable for institutional investors’ standards has gradually run out. We may assert that with the recovery of the property investment market, the following stages have been noted:

- 2013-2014: Interest in distressed portfolios mainly articulated through opportunistic strategies. In this early phase of the recovery, funds of primarily American and British origin sought out properties in the hands of banks, who in turn needed to monetise their assets acquired through repossessions. Opportunistic investors also sought properties in the hands of corporates in need of cash. Within this context, sale and leaseback deals were used by corporates to gain liquidity whilst continuing to occupy their current premises.

- 2014-2016: Investors actively tracked down assets in need of capital expenditure (CAPEX), skewing the market towards value added strategies. During this phase, capital markets were anticipating the recovery of the occupier market. Accordingly, investors acquired assets with every degree of vacancy, even those which were completely empty. Evidence suggests that fully refurbished buildings are welcomed by the market, as those converted to grade A space were swiftly leased, even under pre-letting contracts, a formula that had remained unseen in the Spanish property markets for 6 years.

- 2016-2018: With constant yield compression across all types of assets since the beginning of the recovery, investors have maintained their value added strategies. Nevertheless, the focus is gradually moving towards near prime assets and good assets in secondary locations and cities, where the economic recovery is taking hold and the leading strategy is build-to-core. This means that purchases on the main thoroughfares of Madrid and Barcelona are giving way to investment deals in near-prime locations, as well as in cities such as Valencia, Bilbao and Seville, among others. The main assets sought in those cities and their areas of influence are shopping centres with strong potential, however transactions are also being seen on logistics, office and high street retail assets.
TOTAL INVESTMENT VOLUME IN SPAIN (M€)
With a total investment volume of €14,000 million, the year 2007 represents a benchmark for the highest level of activity in real estate investment in Spain. However, 2015 and 2016 registered investment volumes above those of the previous cycle and investor appetite signals a reasonable volume of investment activity that could amount to around €10,500 million.

The expectations for good performance on the part of real estate assets being purchased today lies more on the returns side rather than on the capital value side. In other words, the strong reduction in yields seen so far implies that most of the potential for capital value gains are already integrated into today’s asset prices and investors will derive their returns from rent increases, vacancy rate reductions and the indexation of rents to inflation. The outlook for these three underlying elements of returns is positive for at least the next three years in Spain and will surely impact near-prime assets, those of high quality and those employing flexible and creative asset management strategies.

Looking ahead, the economic caveats lying in wait consist of the labour market, with a level of unemployment that still affects a good share of the working population, especially the young; the fiscal deficit, which remains high from the perspective of comparable European economies; and value generation from a poorly-qualified workforce and weak technology intensive business sectors.

Capital will seek out opportunities via new developments, CAPEX deployment and refurbishments on older offices, shopping centres, hotels and logistics units. Direct investment will also aim at alternative assets, where experienced and specialised investors will hunt down portfolios comprising petrol stations, car parks and student and senior housing.

The current climate in property investment is exciting. Investors are facing a period of economic consolidation that is re-shaping the markets. Following a number of years of pronounced activity, the search for the right opportunities is becoming a challenge that requires the best advice in order to fine tune the best entry, management and exit strategies.

**Capital markets have actively shovelled money into the Spanish property markets since the beginning of the recovery back in the summer of 2013. Following almost 3 years of continuous recovery, the interest in real estate assets in Spain remains intact and 2017 will sustain high levels of liquidity such as those seen during the 2 previous years.**
### General

**Documentation**
A non-standard document is drawn up and signed by both the tenant and the landlord. Prior to this and as proof of genuine interest on the part of the tenant, the landlord requires a non-binding letter of offer that contains the basic lease terms (initial rent, rent free period, lease length, service charges, car parking, etc.). Although the landlord is not required to sign this document, it represents the first stage prior to commencing negotiations.

**Enforceability of Lease**
Lease contracts are legally binding documents.

**Restrictive User Clauses**
None of note.

**Broker’s Fees**

**Leasing**
- **Tenant:** Agent’s fee at 10% of annual rent on High Street. If a premium is involved, then 2%-5% of a total premium is added.
- **Landlord:** Agent’s fee ranges from a month’s rent equivalent to 10%-15% of the annual rent for Office and Industrial property. Agent’s fee at 10%-15% of the annual rent on High Street.

**Rental Payments**
- **Rent Payment and Frequency:** Euro per square metre per month, due monthly in advance. It is typical in the case of high street retail units to quote rent as an overall monthly rent, rather than a price per sq.m.
- **Rent Deposit:** A security deposit of 2 months’ rent is required by law. An additional bank guarantee is often required (6-12 months’ rent + service charge + VAT).
- **Indexation:** Standard practice is annually according to CPI, though indexation can be agreed between both parties (fixed, stepped, CPI+1).
- **Security of Tenure:** None, however no restriction is placed on the parties to agree further terms.
- **Premium/Key Money:** Quite common in high street properties. The new tenant is required to pay for occupying the retail unit, the signature of a new contract being mandatory.
- **Turnover Rent:** Typical in Shopping Centres, at 5%-8% of turnover, although anchors may pay less. A base rent is charged and the tenant will pay a higher rent if the turnover rent exceeds that amount.
- **Tenant Liability:** None, although tenants often purchase public liability insurance. The tenant is responsible for reinstating the premises, with the exception of reasonable wear and tear.

### Lease Terms

**Duration of Lease**
- **Office:** 3-5 years.
- **Industrial:** 3-5 years.
- **Retail:**
  - Shopping centre: 5-10 years.
  - High Street: 10-15 years.

**Break Options**
- **Offices:** No restriction on office agreements. A tenant will not usually have to commit to more than 5 years.
- **Logistics:** Break option at the end of the 3rd year.
- **Shopping centres:** In long term leases of more than 5 years, usually there is a break option at year 5.
- **High Street:** 3 years are usually compulsory. Break options at the 5th or 10th year with 6 months’ notice.

### Service Charges, Repairs & Insurance

**Repairs**
- **Tenant:** Internal repairs and maintenance.
- **Landlord:** External repairs and maintenance.

**Insurance**
- **Tenant:** Contents insurance.
- **Landlord:** Building insurance.

**Service Charges**
Normally calculated on a separate basis from the monthly rent.

**Utilities Included in Service Charge**
Yes, to include: maintenance of common areas, security service, electricity, water, etc., for common areas, gardening, façade maintenance and cleaning etc.

### Measuring Code

**Measurement Practice**
- **Office Gross Lettable Area.**
- **Industrial Gross Lettable Area.**
- **Retail Gross Lettable Area.**
5.
TAX & LEGAL - PORTUGAL

5.1 Forms of Property Investment

Investments can either be made directly by acquiring real estate assets, or indirectly by purchasing the share capital of the entity that owns the assets.

5.1.1 Asset Deals

Ownership in Portugal
The “full ownership” concept in Portugal is coincident with the French concept of “propriété”, the British concept of “freehold” and the German concept of “voll Eigentum” and it is based on the full and exclusive right of use, fruition and disposal of the property.

Other lawfully established rights, in terms of property transactions, particularly include surface rights (direito de superfície). This is similar to the German “Erbbaurecht” and comprises the right to build or maintain a construction on land which is part or fully owned by third parties, in perpetuity or temporarily, in which case surface ownership reverts to the owner of the land at the end of the respective period.

As opposed to other legal systems, the Portuguese system does not provide for fiduciary ownership which is only accepted in the Madeira Free Trade Zone.

Co-ownership of property is allowed under Portuguese law. Reference should also be made to the possibility of constituting a building or several buildings which are functionally interconnected under “horizontal property” regulations.

Formalities for the transfer of property
The sale of (rural or urban) property in Portugal is formalised either in a deed, which is signed before a notary, or in a certified private document, signed in the presence of a lawyer, solicitor, chamber of commerce and industry, recorder or registrar. The sales contract must also comply with other formalities, notably proof of payment of the respective tax obligations.

In particular, documents required for the transfer of property ownership include the need to produce a permit for the use of the property, or a building permit and proof that the property use permit application was submitted more than 50 days beforehand (unless the construction predates 7 August 1951, in which case these formalities do not apply).

5.1.2 Share Deals

The Land Registry
The purpose of the Land Registry is to provide information on a property’s legal status, guaranteeing the lawfulness of the property transaction and confirming the presumption of the existence of a right to the property. The Land Registry in Portugal is managed by the State. Based on these principles, the regulations currently in force require any facts determining the constitution, recognition, purchase or changes of in rem rights over property to be filed with the Land Registry.

The absence of a record may imply the lack of protection for the purchaser vis-à-vis third parties in addition to the impossibility of transferring the property.

With the exception of special cases set out in law (e.g. provisional records of purchase which retain priority after their conversion into a definitive records of entry), pursuant to the principle of the priority of registration, the first recorded right is effective vis-à-vis third parties and takes precedence over the other incompatible rights of third parties, even if such rights have been established prior to the date of registration, when they have not been recorded.

Due diligence and preliminary contracts
Purchasers, either directly or using the services of consultants, are advised to check the commercial, legal, urban, environmental and tax status of any property they intend to acquire.

It is standard market practice, in such circumstances, for purchasers to commission a due diligence exercise on all of the mentioned areas.

If the parties require an immediately binding document, a promissory contract for the sale of the property in question is usually entered into.

Share deals
The main reasons for indirectly acquiring property through an equity stake in an investment vehicle owning such property are the tax implications.
5.2 Vehicles & Forms of Property Investment

It is common practice to set up vehicles for direct or indirect investment in property assets. The following is an analysis of the most commonly used property investment vehicles in Portugal.

5.2.1 Commercial companies

Public limited companies ("S.A.")

Public limited companies are the form usually adopted by larger Portuguese companies. Their equity capital is divided into shares, with a minimum initial amount of € 50,000. They must, initially, have at least five shareholders, and each share with a minimum amount of € 0.01. The possibility of forming an "S.A." with a sole shareholder is permitted by law, provided that the sole shareholder is a commercial company.

Share transfers may be subject to restrictions. Another peculiarity is the fact that information on the respective shareholders is not usually public thus ensuring a measure of confidentiality regarding the owners of the respective equity capital.

Limited liability companies by quotas ("Lda.")

Limited liability companies by quotas are by far the type of companies most frequently found in Portugal. They correspond to a standard small and medium-sized company structure owing to the absence of requirements regarding their initial capital and to the simpler operating structure, enabling their founding partners to exercise greater control.

Equity capital is divided into quotas, with a minimum amount of € 1.00 per shareholder. The company limited by quotas should initially have at least two quota-holders. However, these companies may be held by a sole-quota holder to the extent certain conditions set out in the law are met.

Information on the name of the respective quota-holders and the amount of their respective quotas is filed with the Commercial Registry. This information is publicly available.

Quotas must be transferred in writing and the transfer must also be officially registered with the Commercial Registry.
5.2.2 Property investment funds

The fact that real estate investment funds ("FII") have been one of the most common property investment vehicles in the Portuguese market over the last few years is essentially due to the favourable tax regulations that applied to them.

FIIs are undivided aggregations of assets under the joint ownership of natural or legal persons, referred to as the "unit-holders", who may not, under any circumstances, be held liable for the debts of such funds or of the entities that are liable for their management.

FIIs are divided up into identical investment units\(^2\) which may be recorded in book-entry form or represented by certificates.

**Types of FIIs**

FIIs may be open-ended, closed-end (public or privately subscribed for\(^3\)) or mixed, depending on whether the number of investment units is variable, fixed or variable and fixed, respectively. Closed-end FIIs (privately subscribed for) are the most commonly used investment funds by investors to promote their property investments in Portugal.

**Management of FIIs**

FIIs are a type of undertaking for collective investment of a contractual nature (i.e. they are not corporate entities) and their management must therefore be performed by third parties, who manage and represent them, carrying out the FII’s activity. FIIs may be managed by property or securities investment fund managers or by credit institutions (e.g. banks, leasing and investment companies), who must act in the exclusive interest of their unit-holders.

In acting on the account of the FII, property fund managers should, inter alia, select the assets (e.g. properties) which will comprise the FII’s portfolio, and enter into all business arrangements, undertaking all acts required for the purchase and management of the FII’s assets. Thus, it is the fund manager who carries out the FII’s activity, for and on behalf of the FII.

The incorporation of fund management companies is a relatively complex procedure requiring the approval of the Bank of Portugal. Fund management companies come under the supervision of both the Bank of Portugal and the Portuguese Securities Market Commission ("CMVM"). Their activity is subject to regulatory rules, in particular in light of the conflict of interests and duty of care principles, in addition to shareholders’ equity requirements.

**Depositary**

The securities comprising the assets of the FII must be entrusted to a single depositary, which must be a credit institution. The depositary should be established in Portugal. The fund management company and depositary are jointly and severally liable to unit-holders for compliance with the obligations set out in both the law and the FII’s management regulations.

**Activity of FIIs**

FIIs may perform the following activities relating to property: (i) purchases of property for rental or other forms of use, for consideration; (ii) purchases of property for resale; (iii) purchases of other rights over properties with a view to obtaining a profit; and (iv) performance of building projects and property refurbishments, obtaining a profit for consideration or through resale.

FIIs may not: (i) encumber their assets in any way, except for financing purposes, within lawfully defined limits; (ii) grant loans or provide guarantees—other than those legally permitted pursuant to (i)—; (iii) enter into promissory agreements on the sale of properties which are not owned by the FII yet, except for promissory sales agreements on property coming under the aegis of construction projects.

The assets of a FII may comprise property, liquidity and shareholdings in property companies, whose composition must comply with the rules and limits defined for each type of asset.

**Incorporation of FIIs**

The incorporation of a FII is subject to the CMVM’s consent and supervision.

Within 1 year from its inception, a FII must have assets worth at least € 5 million under management. Failure to meet this criterion will give rise to the CMVM’s entitlement to revoke the FII’s authorisation.

Various costs/charges and expenses (in addition to those involved in the property deals in question) are payable upon incorporation and as consideration for the management of FIIs, notably: (i) charges payable to the CMVM; (ii) commissions payable to the fund manager and depositary; (iii) fees payable for the appraisal of property as required by law; and (iv) fees payable for the audits on the FII’s accounts required by law.

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\(^2\) The investment units are securities without a nominal value and entail the right to an ideal fraction of a collective/autonomous aggregation of assets.

\(^3\) Depending on whether it concerns a public or private offer pursuant to the Portuguese Securities Code.
5.3 Property Finance

5.3.1 Mortgage-backed loans

Mortgage-backed loan contracts are one of the most commonly used means of financing property projects in Portugal.

Bank loans, i.e. contracts in which the lender is a credit institution, must always be set out in writing.

Concept, form and legal requirements

A mortgage is an in rem guarantee (unlike a personal guarantee as described below). Unlike a pledge, a mortgage does not imply the dispossession of assets provided as guarantees.

Mortgages on real estate assets are formalised or amended in the form of a public deed or certified private document, which should be filed with the relevant Land Registry. Failure to do so in line with the number of redemptions and subscriptions of shares, as in the case of open-ended FIs. The SICAFIs share capital is equivalent to the amount defined at the time of its incorporation and varies in line with any increases or reductions of share capital, as in the case of a closed-end FI.

As in the case of fund managers of FIs, SIIMOs must ensure that the total net value of its assets does not fall below € 5 million.

Management of SIIMOs

Unlike FIs, SIIMOs’ shareholders may jointly be investors (as shareholders) and managers of a SIIMO (self-management) or, alternatively, appoint a property investment fund manager to perform the task (external management).

SIIMOs’ activity is subject to the dual supervision of the Bank of Portugal and the CMVM (already applicable to FII’s managers in their role as financial intermediaries).

Incorporation of SIIMOs

Reference should, lastly, be made to the fact that the rules governing the incorporation of FIs apply, mutatis mutandis, to the incorporation of SIIMOs as well as the general rules of the Portuguese Companies Code on the formalities required for the incorporation of commercial companies when these do not conflict with the FIs regulations and the nature and object of a SIIMO.

5.2.3 Property investment companies

The possibility of incorporating FIs with a corporate form was enacted in Portuguese legislation under the name of property investment companies (Sociedades de Investimento Imobiliário - “SIIMO”).

Types of SIIMOs

SIIMOs are collective investment undertakings with their own legal personality which may take the form of “SICAVIs” (public limited companies—S.A.—with variable capital) or “SICAFIs” (public limited companies—S.A.—with fixed capital). The SIIMOs are either self-managed or managed by a contracted third party (external management), always acting independently, on a fiduciary basis, in the exclusive interest of shareholders.

SIIMOs are subject to (i) the regulations on open-ended and closed-end FIs, respectively and (ii) to the extent they are not incompatible with the nature and object of SIIMOs, the regulations set out in the Portuguese Companies Code and other Portuguese corporate legislation.

A SIIMO must have a minimum initial share capital of € 375,000, divided into identical nominative shares with no nominal value.

A SICAVI’s share capital is equivalent, at any point in time, to the total net value of its assets, which constantly changes in line with the number of redemptions and subscriptions of shares, as in the case of open-ended FIs. The SICAFI’s share capital is equivalent to the amount defined at the time of its incorporation and varies in line with any increases or reductions of share capital, as in the case of a closed-end FI.

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will mean the mortgage is not validly created. The Land Registry is, therefore, essential for the creation of this guarantee.

Mortgage extension

Mortgages accompany the changes affecting the asset. Accordingly, and without prejudice to the rights of third parties, a mortgage will be automatically extended to all improvements and constructions carried out on property provided as a guarantee.

Enforcement

A mortgage entitles the creditor to enforce its rights against a property, with priority over other creditors of the owner of the
property who do not enjoy any special privilege or priority in terms of registration. In addition, the creditor may not directly appropriate the mortgaged property, but must instead initiate foreclosure proceedings.

5.3.2 Other common guarantees

The financing of a property project typically entails the borrower granting a complete “security package” comprising in rem and personal guarantees to ensure the repayment of the loan principal, respective interest and default interest thereon under the terms of the loan contract.

Similarly to mortgages, pledged assets cannot be appropriated by the creditor (except for financial pledges as set out below), but must be subject to foreclosure proceedings instead.

Pledge agreement
A pledge is another type of in rem guarantee giving creditors preferred payment status over other creditors, for the value of a specific movable asset, or the amount of other credits or asset rights which cannot be mortgaged. Excluding exceptional cases, the creation of a pledge always implies surrendering the asset to the creditor.

Pledge over shareholdings
A lender will usually require investing shareholders who hold an interest in the share capital of the borrower, to set up a pledge over all their shareholdings.

In such contracts it is generally agreed that, if the borrower defaults on the loan contract, the lender is immediately authorised to exercise all corporate rights on the mentioned shareholdings, including the right to receive the respective dividends and participate and make decisions at the general shareholders’ meetings.

To provide lenders with extra comfort, investing shareholders are usually asked to confer irrevocable powers of attorney to the lender.

A pledge agreement on shareholdings should be in the legally required format and comply with the terms and conditions set out under Portuguese law and in the company’s articles of association for the transfer thereof in an inter vivos act.

Pledge over credit rights
Lenders may also require investors to provide the same guarantee over credit rights to which they are entitled, such as those deriving from the rents due under leases, bank accounts, insurance policies, construction or property development contracts. Basically, a lender may demand, as a guarantee, a pledge over the credit rights to which borrowers are entitled and which represent the main source of income from the financed project.

Financial pledges
Pledges may be qualified as financial guarantees if certain conditions have been met (e.g. between credit institutions and legal entities, involving cash or financial securities).

This type of contract has the following features (which are forbidden in the case of civil pledges): (i) the collateral taker may dispose of the pledged asset (i.e. the collateral), although it must return an equivalent collateral to the collateral provider, when the contractual obligations have been met; and (ii) if the guarantee is called in, the collateral taker is entitled to appropriate the collateral (provided that the parties: (a) have agreed a suitable contractual provision for this possibility; and (b) are in agreement over the valuation of the financial collateral).

Sureties
A third party is often requested to provide surety (usually the borrower’s shareholders or, if applicable, the parent company of the group to which it belongs) for the benefit of the lender.

As it is a personal guarantee, unless the parties agree otherwise, the full amount of the guarantor’s assets will be held accountable for complying with the obligations undertaken by the borrower.

These guarantees are typically in written form, with the guarantor’s signature being notarised.

5.3.3 Stamp Tax

It should be noted that financing and guarantees granted in Portugal or herein presented for any legal purposes are subject to Portuguese Stamp Tax, at the following rates levied on the amount financed or the maximum amount of each guarantee, as the case may be: (i) 0.04% for each month or part thereof for finance or guarantees with a maturity of less than 1 year;
Property project developments in Portugal must always abide by the rules and legal standards relating to urban planning and administrative licensing of projects.

The main statutes in which urbanisation standards are set out are, in addition to the Constitution of the Portuguese Republic (Constituição da República Portuguesa)—which defines the principles and tasks related to urban planning and territorial development—the “LBPOTU” (Basic Law on Territorial and Urban Planning Policies - Lei de Bases da Política e do Ordenamento do Território e do Urbanismo), the “RJIGT” (Territorial Planning Instruments Regulations - Regime Jurídico dos Instrumentos de Gestão Territorial) and the “RJUE” (Urbanisation and Building Regulations - Regime Jurídico da Urbanização e da Edificação).

Portuguese municipalities, however, perform a fundamental role both in terms of urban planning and property project licensing.

5.4.1 Introduction

Property project developments in Portugal must always abide by the rules and legal standards relating to urban planning and administrative licensing of projects.

The main statutes in which urbanisation standards are set out are, in addition to the Constitution of the Portuguese Republic (Constituição da República Portuguesa)—which defines the principles and tasks related to urban planning and territorial development—the “LBPOTU” (Basic Law on Territorial and Urban Planning Policies - Lei de Bases da Política e do Ordenamento do Território e do Urbanismo), the “RJIGT” (Territorial Planning Instruments Regulations - Regime Jurídico dos Instrumentos de Gestão Territorial) and the “RJUE” (Urbanisation and Building Regulations - Regime Jurídico da Urbanização e da Edificação).

Portuguese municipalities, however, perform a fundamental role both in terms of urban planning and property project licensing.

5.4.2 Urban Planning

Urban planning in Portugal is regulated by several principles, in particular, the principle of urban development in accordance with the relevant plans, and the principle of standardised plans. The plans set out the principles and rules governing the occupation, use and transformation of the land and therefore play a main role in terms of the development of property projects.

The territorial management system comprises a series of territorial management instruments (instrumentos de gestão territorial) designed to achieve specific interests and objectives, which interact and are coordinated with each other.

The RJIGT is the main urban planning law in Portugal. It defines the coordination system between the national, regional and municipal scopes of the territorial management system, the general regulations covering land use and the production, execution and assessment of territorial management instruments.

The territorial management instruments provided for by the RJIGT are classified as having a national, regional or municipal scope, depending on the interests involved. “PMOTs” (Municipal Territorial Planning Schemes - Planos Municipais de Ordenamento do Território) are fundamental instruments designed to implement urban planning policies at a local level, approved by municipalities and split up into “PDMs” (Municipal Master Plans - Planos Directores Municipais), “PUs” (Urbanisation Plans - Planos de Urbanização) and “PPs” (Detailed Plans - Planos de Pormenor).

PDMs encompass the whole of the municipal district and provide a synopsis of the local planning and development strategy, defining occupation parameters and land use. PUs implement territorial and urban planning policies and may encompass any area included in an urban PDM perimeter, as well as rural land complementary to an urban perimeter and areas set aside for urban use. PPs develop and implement proposals for the occupation of any area within the municipal district, with specific modalities of (i) PPs for interventions in rural spaces, (ii) PPs for urban refurbishment and (iii) PPs for protection purposes.

The development of a property project must, therefore, comply with the applicable territorial management instruments.
5.4.3 Licensing of property projects

The licensing (in the broader sense) of property projects is generally designed to assess whether the intentions of the interested party in terms of urban planning are in accordance with the applicable legal regulations and applicable territorial management instruments.

The municipalities are responsible for preliminary control of urban planning projects, including the construction and use of buildings, and the allotment of land. This does not preclude the need for the involvement of other entities whose opinion may, in many cases, be binding in terms of project licensing. Municipalities are competent to approve municipal urban planning and building regulations, in addition to regulations on the payment of taxes/charges on the performance of urban operations.

The execution of urban planning operations must generally be examined in advance and may require licensing (licenciamento), advance notice (comunicação prévia) or use permits (autORIZAÇÃO DE UTILIZAÇÃO).

The RJUE provides a list of urban operations which require licensing (licenciamento) and advance notice (comunicação prévia), respectively. Other non-listed urban operations which are not exempt from “preliminary control” require advance notice (comunicação prévia), which is considered the supplementary form of “preliminary control”.

The RJUE also lists those operations which are less relevant and have less impact in terms of urban planning. They are exempt from licensing or advance notice requirements.

Reference should also be made to the fact that an interested party may submit a request for advance information (pedido de informação prévia - “PIP”) on the feasibility of a specific urban project as well as to any legal or regulatory constraints. This highly important mechanism is widely used in the field of property transactions.

The municipality has a term to consider the request on the said advance information and its decision is binding on the competent entities regarding the licensing or the advance notice decision to which it refers. The effects of such information provided are valid for a period of 1 year.

After the building has been completed, a property use permit for the buildings or condominium units thereof must be obtained. The purpose of this authorisation is to verify the urban project’s completion, and its conformity with the approved plans and licensing or advance notice conditions. The property’s use permit certifies the use which may be given to the building or condominium units thereof, and is of the utmost importance for the sale of the property.

5.5 Special Licensing

5.5.1 Commercial Licensing

Decree Law no. 10/2015, of 16 January on the legal regime on access to commerce, services and food and beverages activities (regime de acesso às atividades de comércio, serviços e restauração), defines the authorisation process governing the installation and modification of commercial retail establishments (estabelecimentos comerciais) and commercial complexes (conjuntos comerciais) in Portugal, usually referred to as “commercial licensing”.

Scope

The following commercial retail establishments and commercial complexes, among others, are covered by commercial licensing regulations:

(i) commercial establishments with a sales area of 2,000 s.qm. or more operating in commercial complexes; (ii) commercial establishments with a sales area of less than 2,000 s.qm. which are not operating in commercial complexes and which belong to a company using one or more trade names or which are part of a group with an aggregate nationwide sales area of 30,000 s.qm. or more, and (iii) commercial complexes with a gross lettable area (“GLA”) of 8,000 s.qm. or more and commercial retail establishments not operating in commercial complexes with a GLA of 8,000 s.qm. or more.

Commercial licensing regulations encompass not only the installation of the abovementioned commercial retail establishments and commercial complexes but also any modifications comprising (i) changes of location (unless within a commercial complex and not involving an increase in sales areas), type, sales area or trade name of a commercial retail establishment (unless within the same group), or (ii) a change of location, type or GLA of a commercial complex.

The application of the commercial licensing regulation does not exempt the developer from complying with the construction licensing regulations and any other particular legislation, such as the Environmental Impact Assessment Regulations, when required.

Competency

The DGAE (Direção Geral das Actividades Económicas) is responsible for coordinating the commercial licensing authorisation process.
5.5.2 Licensing of tourist resorts

The installation, exploitation and operation of tourist resorts is also subject to special licensing regulations under Decree Law no. 39/2008, of 7 Marcha, as amended (“RJET”).

Types of tourist resorts

The RJET defines seven types of tourist resorts, as follows: (i) hotels and aparthotels; (ii) tourist villages; (iii) tourist apartments; (iv) tourist resort complexes; (v) cultural residential tourist resorts (manor/country houses); (vi) rural tourist resorts; and (vii) camping and caravan sites.

Each type of tourist project must comply with lawfully defined common and specific requirements on construction, infrastructures, accommodation capacity, common use and entertainment facilities.

Based on the quality of service, installations and facilities provided, tourist resorts comprising hotels are graded from one to five stars, and tourist villages and apartments and rural hotels from three to five stars. These classifications are awarded on a points system by Turismo de Portugal, I.P. (the regulatory body for Portuguese tourism) and must be reassessed every 4 years.

Licensing

The licensing of tourist resorts is closely associated with the RJUE, which applies to the licensing of urban projects used as a basis for the development of the tourist resort in question, under the aegis of the competent municipal authorities.

Turismo de Portugal, I.P. is, in turn, responsible for verifying the adequacy of the planned tourist resort for the envisaged type and use, involving the analysis of the project’s architectural features.

After the tourist resort has been built, a use permit for tourist purposes (autorização de utilização para fins turísticos) should be issued pursuant to a combination of RJUE and RJET regulations.

Tourist resorts under plural property regime

Deed of establishment (título constitutivo)

Tourist resorts under plural property regime (i.e. comprising multiple accommodation units), are regulated by a deed of establishment (título constitutivo) to be executed by the holder of the licence or permit to develop the urban project regarding the installation of a tourist resort, or by the holder of the respective use permit.

The deed of establishment of a tourist resort erected with building(s) on a plot of land corresponds to the horizontal property/condominium deed when such horizontal property/condominium has not yet been set up, provided that it complies with the applicable legal requirements. The incorporation certificate must be filed with the Land Registry before the execution of any contract (or promissory contract) regarding the transfer of plots or of autonomous units.

Operation and management of tourist resorts

A tourism operation assignment agreement is entered into upon the sale of each accommodation unit (i.e. an autonomous unit or building plot), by which the tourist resort operator appointed by the developer (and identified as such in the deed of establishment of the tourist resort) undertakes to operate the relevant accommodation unit, pursuant to certain terms and conditions.

There is currently no time limit on a purchaser’s occupation of the accommodation unit (i.e. if the purchaser intends to do so, he may refrain from providing the accommodation unit for tourist operation and occupy it 365 days a year). This notwithstanding, the operator of the tourist resort must ensure that all the mandatory services for the category of the relevant tourist resort are available, and that all the accommodation units are furnished, equipped and ready to be rented for tourist accommodation purposes.

5.5.3 Local Lodging (alojamento local)

Decree Law no. 128/2014, of 29 August, as amended, sets forth the legal framework applicable to local lodging (alojamento local), applicable to the temporary local accommodation offered to tourists for consideration, whenever the establishment does not meet the requirements to be deemed a tourist resort subject to the RJET.

This regime applies to temporary local accommodation in apartments, houses or lodges (estabelecimento de hospedagem) under which the accommodation units are rooms, including hostels.

The exercise of this activity is subject to a prior communication and registration with the relevant municipality.

Among other restrictions, local tourist accommodation is limited to nine rooms and 30 users, except in respect of hostels, to which no such restriction applies.

The ASAE (Food and Economic Security Authority - “Autoridade da Segurança Alimentar e Económica”) is the supervisory body responsible for ensuring the compliance of the local tourist accommodation with the applicable regulation.

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6 Legal regime on the installation, exploitation and functioning of tourist undertakings - Regulations for Tourist Resorts - Regime Jurídico da Instalação, Exploração e Funcionamento dos Empreendimentos Turísticos.
5.6 Leases

5.6.1 General Issues

Property leases are currently regulated by the Portuguese Civil Code and the New Urban Lease Regulations approved by Law no. 6/2006, of 27 February, as amended, (“NRAU”), which must be applied to all contracts involving the temporary lease of a property for consideration.

On 14 August 2012, in compliance with the terms established in the memorandum of understanding executed by and between Portugal, the European Commission, the European Central Bank and the International Monetary Fund, a pack of Decree-Laws entered into force with the purpose of implementing structural reforms in the Portuguese legal framework for leases, in order to boost the leasing market.

Form: A lease agreement must be entered into in writing and identify the parties, the leased premises, the purpose, the rent and the property’s use permit certifying its suitability for the desired purpose.

Purpose: Leases entered into for a purpose that differ from the licensed one (e.g. if the property has been licensed for housing and is used for a commercial purpose) are void.

Transfer of ownership: In the event of the sale of the property by the landlord, the new owner automatically assumes the landlord's respective position in any leases.

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

5.6.2 Leases for commercial purposes

Freedom of contract: The most relevant aspects of lease agreements for commercial purposes such as term, rent and the respective update criteria, works and liability for the leased premises’ maintenance, termination and opposition to renewal may be freely stipulated by the parties, with the subsidiary application of the rules applicable to leases for housing purposes.

Term: Lease agreements may be entered into for a fixed term or a non-fixed term. The latter option is not commonly used in the property market. If entered into on a fixed term basis, the initial duration may be freely agreed between the parties, subject to the legal maximum limit of 30 years. The agreement will be automatically renewed for equal and successive periods, unless the parties agree otherwise.

Transfer of tenant’s contractual position: The transfer of a tenant’s contractual position requires permission from the landlord, except for certain situations legally provided, notably in the case of a transfer of a commercial or industrial business (trespasse) when including the right to lease.

Transfer of Business (trespasse): The tenant’s right to transfer the business exploited in the leased property, including the right to such lease, is mandatory and cannot be eliminated by the parties, nor be waived in advance by the tenant.

Landlord’s pre-emption right in the case of a transfer of business by the tenant: Unless otherwise agreed by the parties, the landlord is lawfully entitled to a pre-emption right over the business in the case of a business transfer (including the lease right) by the tenant, or in the case that the business (including the lease right) is given as payment in kind by the tenant.

Tenant’s pre-emption right on sale of leased property: If a landlord intends to sell the leased property, the tenant occupying the property for more than 3 years has a pre-emption right over the property in respect of the said sale. This pre-emption right is mandatory and cannot be eliminated by the parties nor be waived in advance by the tenant of the establishment.

Termination form: The landlord’s termination due to the tenant’s breach of contract must be declared judicially except when based (i) on the tenant’s opposition to works ordered by public authorities; (ii) on the delay of more than 2 months in the payment of the rent, charges/costs or expenses; or (iii) on the delay of more than 8 days in the payment of the rent, on
more than four occasions, whether continuously or not, within a period of 12 months. In such cases the contract is terminated by means of a written communication sent by the landlord to the tenant.

5.6.3 Leases for housing purposes

Freedom of contract: Lease agreements for housing purposes, unlike the lease agreements for commercial purposes, have a lesser degree of contractual freedom. Some of the most important matters are imperatively established in the law. That is the case of the rules regarding the early termination and the opposition to the renewal of the lease agreements which were nevertheless softened in the legislative reform of 2012, favouring the landlord.

Term: Lease agreements for housing purposes may also be entered into for a fixed term (with an initial term of up to a limit of 30 years) or be of non-specified duration. The fixed term agreement will be automatically renewed for equal and successive periods, unless any of the parties serve prior written notice within the following terms:

<table>
<thead>
<tr>
<th>Opposition by landlord</th>
<th>Opposition by tenant</th>
</tr>
</thead>
<tbody>
<tr>
<td>240 days, for leases with a term of ≥ 6 years</td>
<td>120 days, for leases with a term of ≥ 6 years</td>
</tr>
<tr>
<td>120 days for leases with a term of ≥ 1 year and &lt; 6 years</td>
<td>90 days for leases with a term of ≥ 1 year and &lt; 6 years</td>
</tr>
<tr>
<td>60 days for leases with a term of ≥ 6 months and &lt; 1 year</td>
<td>60 days for leases with a term of ≥ 6 months and &lt; 1 year</td>
</tr>
<tr>
<td>1/3 of the term for leases with a term of &lt; 6 months</td>
<td>1/3 of the term for leases with a term of &lt; 6 months</td>
</tr>
</tbody>
</table>

These terms refer to the initial term of the agreement or of its renewal.

The tenant is also entitled to oppose to the renewal of the lease, but also carry out an early termination of the lease agreement at will, provided that 1/3 of the lease duration has elapsed, by means of a prior written notice within the term provided in the law.

Prior notice for tenant’s early termination

| 120 days, for leases with a term of ≥ 1 year |
| 60 days, for leases with a term of < 1 year |

These terms refer to the intended termination date.

Termination of non-specified duration lease agreements by the landlord: The landlord may terminate non-specified duration lease agreements in case of:

(i) need of the leased property as housing for the landlord or their first line descendants;
(ii) demolition or execution of construction works that will require the vacancy of the leased property; or
(iii) at will, by serving a 2-year prior written notice.

Termination of non-specified duration lease agreements by the tenant: The tenant may terminate non-specified duration lease agreements, provided that 6 months of the lease duration has elapsed, by means of a prior written notice within the following terms:

| Prior notice for tenant’s termination |
| 120 days, for leases in place for ≥ 1 year |
| 60 days, for leases in place for < 1 year |

In the case the landlord terminates the agreement pursuant to scenario iii. above (i.e. at will by serving a 2-year prior written notice), the tenant is allowed to terminate the agreement before such a 2-year period ends, by serving a prior written notice within the term provided in the law.

Transfer of tenant’s contractual position: As a general rule, the transfer of the tenant’s contractual position may only be carried out with the landlord’s consent. Special protective rules apply in case the lease agreement concerns the family residence (casa de morada de família) in the event of divorce or judicial separation of persons and goods, and in the case of the tenant’s death.

Tenant’s pre-emption right on sale of leased property: The aforementioned rules concerning leases for commercial purposes also apply here.
5.6.4 Transitional legal framework

The entry into force of the NRAU on 28 June 2006, as amended, not only established the legal framework for new lease agreements but also a transitional legal framework applicable to leases entered into prior to the said date. Distinction is made between (i) lease agreements for housing purposes entered into after the enforcement of the Former Urban Lease Regulations (“RAU”), i.e. 18 November 1990, and lease agreements for commercial purposes entered into after the entry into force of Decree Law no. 257/95, of 30 September (“DL 257/95”), i.e. 5 October 1995; and (ii) lease agreements for both housing and commercial purposes entered into before the effectiveness of said laws.

Agreements for housing purposes executed after the entry into force of the “RAU” and agreements for commercial purposes executed after the entry into force of DL 257/95:
Regarding these agreements, the transitional legal framework stipulates that the former limited duration lease agreements (arrendamentos de duração limitada), currently referred to as fixed term leases, are automatically renewed (unless any of the parties opposes the renewal) at the end of the respective term and for a period of 2 years, except for due provision made to another renewal period.

The transitional system provides that lease agreements without limited duration are subject to regulations on unspecified duration contracts, introduced by the NRAU. However, they are subject to several special features, such as the non-application of the landlord’s right to termination at will and by means of a prior written notice, in the case that the tenant is 65 years old or older, or has a degree of disability higher than 60%.

Agreements for housing purposes executed before the entry into force of the “RAU” and agreements for commercial purposes executed before the entry into force of DL 257/95:
Regarding these agreements, the transitional legal framework sets forth that the former limited duration lease agreements, currently referred to as fixed term leases, are deemed as automatically renewed (unless any of the parties opposes the renewal) at the end of the respective term for a period of 2 years, unless the contract provides another renewal period.

As regards lease agreements without limited duration, the transitional regime provides that such agreements are subject to the regulations on non-fixed term lease agreements, introduced by the NRAU, with certain particularities, such as the following: (i) the non-application of the landlord’s right to termination at will; (ii) as to leases for commercial purposes, the possibility of termination by the landlord by serving a 5-year prior written notice in the event of transfer of business, assignment of establishment (locação do estabelecimento), assignment of the lease for carrying out liberal professions (cessão do arrendamento para exercício de profissão liberal) or, if the tenant is a company, the transfer of more than 50% of its shareholdings (the termination of the lease by the landlord in these cases is only possible if the aforementioned facts occur after the enactment of the NRAU); and (iii) in the case of the termination of a lease agreement for demolition purposes, or for the execution of construction works that require the vacancy of the leased area, the landlord must relocate the tenant in similar conditions as those of the leased area, whenever the tenant is at least 65 years old, or has a proven degree of disability higher than 60%.

5.6.5 Procedure regarding the update of old rents

The NRAU establishes a procedure regarding the update of rents arising from agreements entered into before the entry into force of the RAU and DL 257/95, as applicable, with the aim of updating the amount of such rents to the market value. This rent update is based on a negotiation procedure between landlord and tenant within the transition of said contracts to the NRAU specifically provided in the law.
5.6.6 Urban rehabilitation

In order to promote the rehabilitation of properties, the new reform simplified the urban licensing procedure required for these operations as well as the termination of lease agreements for such purposes.

Since September 2012, there is a special procedure applicable to the prior licensing control regarding buildings that were built at least 30 years ago and that are greatly deteriorated. According to this procedure, the execution of works in such buildings does not require a construction licence, but a prior communication to the competent entity instead.

In the case that the landlord intends to carry out remodelling construction works or deep restoration, he/she may terminate the agreement without having to resort to court and obtain the release of the leased property, provided that the landlord relocates the tenant or, alternatively, pays the latter the compensation due (the tenant’s relocation is mandatory whenever the landlord and tenant do not agree otherwise and the tenant is 65 years old or more, or has a proven degree of disability higher than 60%).

Since September 2012, there is a special procedure applicable to the prior licensing control regarding buildings that were built at least 30 years ago and that are greatly deteriorated.
5.7 Tax Overview

5.7.1 Acquisition

Transfer Tax ("IMT")
Property purchases are subject to IMT, levied on the respective price or tax registered value (whichever is the higher) at a rate of:
(i) 0% to 6% on residential property;
(ii) 6.5% on other urban property or land for construction;
(iii) 5% on rural property; or
(iv) 10% whenever the purchaser is not an individual, and is resident in a country, territory or region benefiting from clearly more favourable tax regulations, as set out in the list approved by the Ministerial Order 150/2004 of 13 February, as amended by the Ministerial Order 345-A/2016 of 30 December ("Listed Tax Haven").

Special Stamp
Stamp Tax at a rate of 0.8% is also payable on property purchases, levied on the same amount subject to IMT (unless exemption from the applicable VAT has been waived, in which case Stamp Tax is not due, although IMT continues to apply).

Value Added Tax ("VAT")
As a general rule, the transfer of real estate properties is exempt from VAT.
However, provided that certain conditions are met, the parties may waive the applicable VAT exemption, in which case VAT will be due (at the standard rate of 23%, to be charged by the landlord to the tenant).

VAT
As a general rule, lease agreements are exempt from VAT.
However, provided that certain conditions are met, the parties may waive the applicable VAT exemption, in which case VAT will be due (at the standard rate of 23%, to be charged by the landlord to the tenant).

5.7.2 Ownership

Real Estate Tax ("RET") and Additional Property Tax ("ARET")
RET is annually due on the property’s taxable value and is payable by property owners as of 31 December of each year. RET rates currently vary between 0.3% and 0.45% for urban property and land for construction. The rate applicable on rural property is 0.8%. The RET rate on property which is owned by residents, which are not individuals, in a Listed Tax Haven is 7.5%.
As of 1 January 2017, ARET is also applicable on the sum of all tax registered values of properties with residential purposes and plots of land for construction held by the same owner. The applicable rates are 0.7% for individuals, 0.4% for corporate entities and 7.5% for entities resident in a Listed Tax Haven. Individuals only pay the ARET on the taxable value exceeding EUR 600,000, but are subject to an increased rate of 1% on the part of the taxable value exceeding EUR 1M.

Income Tax (Non-resident investors)
Rental income obtained by non-residents from properties located in Portugal is taxable at a special rate of 28% in the case of individuals, or 25% applicable to corporate entities. In both cases, such income is subject to a 25% withholding tax, whenever it is paid by entities which must have an organized accounts system.
Non-resident investors must file a declaration of the start of activities with the Portuguese tax authorities prior to initiating the property rental activity, as well as their respective income tax returns.

5.7.3 Sale

Income Tax (Non-resident investors)
Capital gains obtained by non-residents on the sale of property in Portugal are subject to taxation at a rate of 28% for individuals, and of 25% for corporate entities. Such capital gains, may, however, be excluded from taxation in Portugal if a Double Taxation Treaty applies.

VAT
As a general rule, the transfer of real estate properties is exempt from VAT.
However, provided that certain conditions are complied with, the parties may waive the applicable VAT exemption, in which case VAT will be due (at the standard rate of 23%, to be self-assessed by the purchaser and, to the extent the property is fully allocated to an activity subject to, and not exempt from, VAT, to be immediately deducted).
5.7.4 Investment Structures

Investments can be made in property located in Portugal through asset deals or assuming the form of a share deal, which, depending on the specifics of the case, may be a better option from a tax perspective. Such alternative share deal structures particularly include (i) the use of a company resident in Portugal (“SPV”); and (ii) the use of a property investment fund or company (FIIs and SIIMOs). Below is a summary of the applicable tax regimes:

<table>
<thead>
<tr>
<th>TAX</th>
<th>SPV</th>
<th>FII / SIIMO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IMT AND STAMP TAX</strong></td>
<td>The acquisition of an SPV is not subject to IMT or Stamp Tax, provided that the SPV is a limited liability company. The acquisition of properties by an SPV is, as a general rule, subject to IMT and Stamp Tax at the standard applicable rates.</td>
<td>The acquisition of units in a FII or shares in a SIIMO is not subject to IMT or Stamp Tax, except for the acquisition of units representing more than 75% of the capital of closed-end FIIs of private subscription. The acquisition of properties by FIIs/SIIMOs is, as a general rule, subject to IMT and Stamp Tax at the standard applicable rates.</td>
</tr>
<tr>
<td><strong>STAMP TAX: ON-GOING</strong></td>
<td>No Stamp Tax is due on the properties held by an SPV.</td>
<td>FIIs and SIIMOs are subject to Stamp Tax, levied quarterly on their global net asset value (i.e. the average net asset values notified to CMVM or published by the management entity of the FII/SIIMO, excluding the value of units in funds or shareholdings in investment companies), at a rate of 0.0125%.</td>
</tr>
<tr>
<td><strong>RENTAL INCOME AND CAPITAL GAINS</strong></td>
<td>Income obtained by SPVs, including rental income and capital gains are subject to Corporate Income Tax (CIT), at the standard rate of 23%, eventually increased by a municipal surcharge of up to 1.5%, as well as by a state surcharge of: (i) 3% on taxable profit of more than € 1.5 million and up to € 7.5 million; (ii) 5% on taxable profit exceeding € 7.5 million and up to € 35 million; and (iii) 7% on taxable profit exceeding € 35 million. Favourable reinvestment regulations may apply when the capital gains result from the disposal of tangible fixed assets held for a minimum period of one year (the reinvestment legal regime is no longer applicable to the immovable property accounted for as investment properties). The regulations allow an SPV to deduct to its taxable profit 50% of the capital gains provided that certain conditions are met.</td>
<td>FIIs and SIIMOs are subject to CIT on their annual taxable profit, at the 21% standard rate. However, investment income, real estate income, and capital gains obtained by a FII or SIIMO are not subject to CIT, except if the income is distributed or due by an entity resident in a Listed Tax Haven, or it results from the transfer of an interest held in such an entity. Expenses incurred in connection with income and gains not subject to CIT are not deductible for CIT purposes.</td>
</tr>
<tr>
<td><strong>DIVIDENDS DISTRIBUTED TO NON-RESIDENT SHAREHOLDERS / UNITHOLDERS</strong></td>
<td>Dividends paid to non-resident shareholders by an SPV are subject to withholding tax in Portugal, at a definitive withholding tax rate of 28% for individuals and at a rate of 25% for corporate entities. Both rates are increased to 35% whenever the shareholders are resident in a Listed Tax Haven (these rates may be reduced if a Double Taxation Treaty applies). If such shareholders are corporate entities said dividends are exempt from tax in Portugal, provided that the following cumulative conditions are met: (i) the shareholders are corporate entities resident in a) an EU Member State, b) a European Economic Area Member State which is bound by administrative cooperation in the field of taxation equivalent to the one established within the European Union, or c) a State with which a Double Taxation Treaty has been concluded, provided that such Treaty includes provisions concerning administrative cooperation in the field of taxation equivalent to the ones established within the European Union; (ii) the shareholders are subject to, and not exempt from a tax referred to in article 2 of the Directive no. 2011/96/EU, of the Council, of 30 November, or to a tax identical to the CIT, provided that the applicable tax rate is not lower than 60% of the CIT rate in force; (iii) the shares held represent, at least, 10% of the share capital of the SPV; and (iii) the shares are held for a minimum period of one year.</td>
<td>Income distributed by a FII or SIIMO to a non-resident shareholder is subject to CIT at a final withholding tax of 10%.</td>
</tr>
<tr>
<td><strong>GAINS OBTAINED BY NON-RESIDENT SHAREHOLDERS ON THE TRANSFER OR REDEMPTION OF SHARES / UNITS</strong></td>
<td>Capital gains obtained by non-residents on the disposal of shares in an SPV are exempt from tax in Portugal, except if (i) at least 50% of the SPV’s assets are immovable property assets; or (ii) the shareholders are resident in a Listed Tax Haven or are entities directly or indirectly held in resident in Portugal with an interest of more than 25%. In such cases, the capital gains will be taxed at a rate of 28%, when obtained by non-resident individuals, or at a rate 25%, when obtained by corporate entities (unless no taxation is due in Portugal under the applicable Double Taxation Treaty).</td>
<td>Capital gains deriving from the disposal or redemption of shares/units of a FII/SIIMO are subject to a special final tax rate of 10%.</td>
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5.8 Labour Legislation

5.8.1 Legal framework

The Portuguese labour legislation is commonly labelled as relatively rigid and overly protective of employees’ rights. However, there have been very significant improvements towards more flexible labour relations. The Portuguese Labour Code, approved by Law no. 7/2009, of 12 February (the “Labour Code”) is a good example of this effort. Also, the Memorandum of Understanding signed between Portugal, the European Commission, the European Central Bank and the International Monetary Fund, determined the adoption of multiple measures aimed at ensuring greater flexibility in labour relations which led to the approval of numerous changes to current labour legislation.

The general framework of labour rights and obligations is provided for in the Labour Code, the provisions of which are then complemented by sundry legislation with regard to certain particular matters (such as some specific types of employment agreements, occupational safety and health, work injuries and diseases, etc.).

Collective bargaining agreements (“CBAs”) may also set aside the rules provided in the Labour Code and in sundry legislation (unless otherwise stated).

5.8.2 Employment contracts

Types of employment contracts

In Portugal, most employment relationships arise out of: (i) employment contracts subject to a defined term (whether fixed or unfixed), hereinafter referred to as temporary employment contracts; and (ii) employment contracts without a term (open-ended agreements), hereinafter referred to as indefinite employment contracts.

Indefinite employment contracts

Under Portuguese law, indefinite employment contracts do not have to be executed in written form.

Nonetheless, even though verbal agreements are valid and binding, the employer is obliged to provide the employee with written information concerning the most significant aspects of the employment relationship, such as the workplace, normal working period, professional category, remuneration and duration of holidays. Furthermore, certain particular clauses, such as post-contractual non-competition obligations have to be agreed in writing. In accordance, these requirements recommend that all agreements be executed in written form.

Temporary employment contracts

Temporary employment contracts may only be executed under the particular conditions set forth in the Labour Code, as follows (CBAs may allow the execution of temporary employment contracts in different and/or additional circumstances):

(i) To address a temporary need of the employer (for instance, the replacement of absent employees, the execution of a specific project, an exceptional increase in a corporation’s activity, seasonable activities, etc.);

(ii) To recruit for a newly set-up corporation or for a new business of uncertain duration in a corporation employing fewer than 750 employees; or

(iii) To hire first job employees, long-term unemployed persons or in other situations set forth in sundry legislation regarding employment policies.

As opposed to indefinite employment contracts, temporary employment agreements have to be agreed in written form and, most importantly, the justification alleged for its execution has to be clearly detailed in the agreement so as to allow the employee to understand why he or she is being hired under a temporary contract. The burden of proof regarding the justification for the execution of a temporary employment contract lies on the employer. In addition, a clear connection between the relevant grounds and the duration of the agreed term must be included.

Temporary employment contracts executed under the circumstances addressed in (i) above are subject to a maximum duration of 3 years including renewals, if any (a maximum of three renewals is admissible). Unfixed temporary employment contracts may last for a maximum period of 6 years. The duration of such contract may not exceed the duration of the employer’s temporary need and the underlying grounds must still apply at the time of any renewal of the contract.

Employment contracts executed in accordance with (ii) and (iii) above, on the other hand, may be for a fixed term only (unfixed term contracts under these justifications are not valid), and their maximum duration is of 2 years, or 18 months in the case of first job hires (the concept of an employee looking for the first job has been defined by Portuguese case law as referring to a person who has never executed a previous indefinite employment contract).

Failure to comply with any of the aforementioned legal requirements shall determine that the employment contract is not subject to a defined term, but to the general strict termination rules governing indefinite employment contracts instead.
**Service commission contracts**

Under Portuguese law, indefinite employment contracts may only be terminated according to the strict general rules explained in section 5.8.3 (Termination of employment contracts) below. Service commission contracts may be a valid alternative for the hiring of senior executives, for instance, since the rules governing termination of these agreements are much more flexible.

Service commission contracts may only be executed with regard to employees rendering management or top-level duties who are under the direct authority of the corporation's board, and personal assistants of board members. CBAs may additionally provide that such contracts are admissible with regard to employees carrying out particularly trustworthy positions, in relation to holders of management or top-level employees, and in respect of employees admitted as heads of department, even if they are not under the direct authority of the board.

When executed with an employee that has no former labour relationship with the employer (i.e., a new hire), a service commission contract may be freely terminated by the employer provided a prior notice period of 30 or 60 days is observed, and a compensation of 12 days of monthly base remuneration and service bonuses for each complete year of service is paid. Nonetheless, the parties may agree on the payment of a higher compensation, and/or a longer notice period, as well as additional conditions.

Service commission agreements may also be used to promote an already hired employee to a management position on a temporary basis. In this event, termination of the service commission contract will require the return of the employee to his previous position (and salary level). Alternatively, however, the employee is entitled to terminate his underlying employment contract and receive the statutory severance compensation.

**5.8.3 Termination of employment contracts**

**Termination by the employer**

**General aspects**

Under Portuguese law, the unilateral termination of indefinite employment contracts by the employer is generally only admissible on disciplinary grounds (which requires, among other aspects, a serious breach of the employees’ duties) or with recourse to redundancy procedures. In both cases, legal procedures must be followed and, in the case of redundancy procedures, severance payments must be made to the employees concerned.

Temporary employment contracts, on the other hand, may be terminated under the general rules applicable to indefinite employment agreements and at the end of their relevant term, provided that a prior written communication is served to the employee within the term provided for in the law.

The termination at the employer’s will triggers the payment of a severance payment to the employee, for an amount which may vary between 12 and 18 days of base remuneration and annuities for each complete year of service (depending on the type of term employment agreement and the date of execution).

**Dismissal on objective grounds**

Termination of employment agreements grounded on objective reasons is mainly triggered by two different procedures: collective dismissal which shall cover at least two (in the case of companies employing 49 employees or less) or five employees (in the case of companies with more than 49 employees), and individual redundancy procedures, whenever those minimum thresholds are not met.

Besides being based on objective reasons (i.e. market, structural or technological grounds or the shutdown of a unit or department), the use of objective criteria for the selection of the impacted employees has to be evidenced by the employer.

The dismissal decision within the scope of a redundancy procedure must be communicated by means of a prior written notice to each employee, within the term provided for in the law.

Any employee who is made redundant through these procedures is entitled to receive a statutory severance payment in an amount that varies between 12 and 30 days of monthly base remuneration and annuities for each complete year of service (depending on the date of execution of the contract), subject to certain maximum limits.

**Unlawful dismissal**

Should the employer dismiss an employee without cause, or in breach of the applicable legal requirements, the dismissed employee may challenge the dismissal before the Labour Courts.

If the claim results in a decision holding that the dismissal was unfair, the dismissed employees will be entitled to: (i) receive all the payments they should normally have earned (including back pay, including salary, holidays, legal subsidies, etc.), as from the month preceding the commencement of the claim and until the final decision of the Court, deducted of any amounts they may have received during the same period and which they would otherwise not have received; and (ii) reinstatement in their former position or, alternatively, at the employees’ choice, to receipt of an indemnity, which the Court will graduate between 15 and 45 days of base salary (and annuities, if any).
per each complete year of service or fraction thereof, with a minimum limit of 3 months compensation.

In companies employing no more than 10 employees, as well as with regard to senior executive officers, employers may oppose the reinstatement of the employee who has been unlawfully dismissed, provided that they can demonstrate that the reinstatement would be seriously harmful to the company’s business, and provided that the basis for the opposition has not been deliberately created by the employer. In this case, however, the amount of the indemnification due to the employee will then range from 30 to 60 days of base remuneration and annuities per each year of service, subject to a minimum of 6 months’ compensation.

**Termination by the employee**

Apart from termination on fair grounds or during the trial period, employees may terminate employment contracts at will. The employee must serve a prior written notice to the employer. As this termination is voluntary, employees are not entitled to receive unemployment benefits.

**Social security**

In Portugal, the general social security rate is of 34.75%; 11% is borne by the employee, and 23.75% is borne by the employer. Directors or board members of commercial companies are currently subject to the same social security rate as an employee, which is levied over a minimum monthly remuneration of € 421.22 (for the year 2017).

Non-resident directors or board members who exercise their office on a temporary basis and who are already subject to a mandatory social protection system in another country, may be exempted from paying any social security charges in Portugal, provided they file evidence of their enrolment in another social security system.

**Labour compensation funds**

Compensation due as a result of the termination of employment agreements is entirely supported by the employer. However, on 1 October 2013, Law no. 70/2013, of 30 August and Order no. 284-A/2013, of 30 September created the Labour Compensation Funds. The purpose of these funds is to ensure the right of the employees hired on or after 1 October 2013 to effectively receive half of the amount of the severance compensation due for the termination of their employment agreements.

According to said legislation, employers are bound to contribute, on a monthly basis, in respect of each employee hired on or after 1 October 2013, a compensation corresponding to 1% of the relevant base remuneration and annuities.

**Minimum national wage**

In 2017, the minimum national wage for employees whose weekly working schedule corresponds to 40 hours is of € 557 (in the Islands of Madeira and the Azores this amount is slightly higher). This amount is usually updated on a yearly basis, normally with reference to January of each year.

Employees’ wages are paid on the basis of 14 months, since employers are obliged to pay additional Christmas and holidays’ allowances, corresponding roughly to 1 month of salary each.

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**Compensation due as a result of the termination of employment agreements is entirely supported by the employer.**
6. TAX & LEGAL - SPAIN

6.1 Forms of property Investment

6.1.1 Direct or indirect investment

Individual investors not only have their own specific aims and objectives when investing, but also a particular financial, tax and legal position. All these factors have to be taken into account in order to design an ideal acquisition structure.

Investments can either be made directly by acquiring real estate assets, or indirectly by purchasing the share capital of the entity that owns the assets.

Apart from the obvious differences, both systems have real estate-related pros and cons, both in terms of liabilities (e.g. those related to planning) and in terms of rights (for specific type of projects). However, the key driver in choosing between direct or indirect investments is usually the tax implications (see section Tax Overview below).

For indirect investments, Spanish law offers a broad range of corporate forms, including limited liability companies and SOCIMIs (as further detailed in section Property Vehicles below), partnerships and other looser forms of association, which fit most situations, including joint ventures, profit sharing arrangements, economic groupings, etc. Although the incorporation of new companies can be a lengthy process (up to six weeks for full registration of a new company), there are plenty of viable alternatives (shelf companies (i.e., recently incorporated companies “for sale”), the use of expressed authorisations to the directors in the deed of incorporation to implement the deal prior to registration, etc.).

6.1.2 Property estates

Forms of holding title to real property in Spain are similar to those of other European continental systems based upon traditional Roman law, meaning that they are based on the concept of “dominium” as opposed to the English approach of “estates”.

The most common type of ownership interest which investors are likely to come across is “propiedad en pleno dominio” or absolute property, which is similar to the French “propriété”, the English freehold or the German “Eigentum”, which includes a generally unlimited right to deal with the property (transfer, charge, etc.).

There are other property estates or rights over real estate that are often used in the retail and office property market:

(i) Surface right (“derecho de superficie”), which is a kind of ground lease, similar to the German “Erbaurecht”. It grants a party an in rem right to build and own a specified construction on a plot of land for a limited period of time (up to a maximum of 99 years), after which ownership of the building reverts back to the landowner.

(ii) Administrative concessions. These “estates” are particularly relevant in public domain areas that cannot be owned by private individuals or entities, such as seaside areas, harbours, etc. An administrative concession is also an in rem right granted by a public authority to a private individual or company which allows the latter to use, develop and operate a specific property for a certain period of time. The holder of the concession does not become the owner, but rather the beneficiary of certain rights, which usually include the right to mortgage and to transfer such rights (subject to the fulfilment of certain requirements).

Co-ownership of property rights is allowed but, as opposed to joint ownership, each co-owner holds an undivided but identifiable interest, which in turn may also be transferred or charged.

Finally, a common institution in the Spanish real estate market is horizontal division (división horizontal), which is similar to the English “commonhold” or the German institution known as the “Wohnungseigentumgesetz”. This allows for separate ownership of certain areas of a building or complex, while the common areas of the building or complex are owned in common by the owners of the private areas.

Catalonia and other regions (comunidades autónomas) have enacted specific regulations that govern several of these types of estates and they must therefore be taken into account when structuring an investment.
6.1.3 Formalities for the transfer of property

The transfer of property merely requires a valid contract and the demise (i.e., delivery of possession) of the property.

In theory, the principle of freedom of contract applies to real estate transfers and these only require a written contract.

However, in practice, due to the additional protection granted by the Land Registry (Registro de la Propiedad), the transfer of property is always carried out in the form of a notarial deed. Spanish notaries have a key role in real estate transactions. The main drawback of notarial formalisation is cost (such as stamp duty and several fees as notaries’ fees). Regarding notaries’ fees, they are based on percentages of the amount of the deal. For deals in excess of EUR 6 million, notarial fees can be freely negotiated and agreed beforehand (and often significantly reduced).

This notwithstanding, private agreements are commonly used for conditional or future purchases without an actual transfer of title to the property.

In practice, the use of all major types of international contractual structures may be found in the Spanish market. Although traditionally contracts for the transfer of title to real estate tended to be not very sophisticated, for high value properties it is becoming increasingly common to see quite detailed (and long) contracts, in line with Anglo-Saxon approaches.

Forward purchase agreements are often encountered in current Spanish practice. Forward funding agreements landed in Spain in the 1990s, especially in the context of office developments involving institutional investors, and are becoming popular again.

Finally, when the property is indirectly held through a property vehicle, the requisites for the transfer of shares or participations must be observed instead.

6.1.4 The Land Registry

Real estate ownership and real estate property rights can be recorded with the Land Registry.

The Spanish Land Registry system combines elements which are familiar to the German and the French systems. Although recording with the Land Registry is not compulsory (except for mortgages and certain type of surface right, where registration is a requirement for their validity), recording has very positive implications.

The main consequence of recording a right with the Land Registry is that it grants protection to good faith third party purchasers who acquire a right from its registered holder. This means that the right acquired cannot be successfully challenged by anyone holding a right which had not been previously recorded in the Land Registry, even if the title of the registered transferor is later deemed void for reasons which do not appear in the Land Registry. This principle is subject to certain exceptions for charges which registration is not compulsory and is also subject to the effects of Spanish insolvency rules.

Generally, registration with the Land Registry requires that the relevant contract is set out in a deed witnessed by a notary. Consequently, notaries play an important role in the process of ensuring good title to real estate. Land Registrars also charge fees for recording rights (based on a percentage of the value), which are not negotiable.
6.2 Property Vehicles

6.2.1 Types of property vehicles

The main types of real estate investment vehicles available in Spain are: (i) limited liability companies (sociedades de responsabilidad limitada) (“SLs”), (ii) public limited companies (sociedades anónimas) (“SAs”), (iii) SOCIMIs (Sociedades Anónimas Cotizadas de Inversión Inmobiliaria, i.e., a Real Estate Investment Trust (“REIT”) -type structure), (iv) real estate collective investment undertakings (instituciones de inversión colectiva inmobiliaria), and (v) mortgage securitization funds (fondos de titulización hipotecaria).

The most common of these vehicles in the Spanish market are SLs and SOCIMIs. SLs are typically used by real estate investors and developers as Spanish special purpose vehicles (“SPVs”). Based on recently enacted tax regulations, SLs are also now being used as Spanish holding companies (“HoldCos”) (instead of Benelux companies —i.e., companies established in Belgium, the Netherlands or Luxembourg—) to hold shares in various Spanish SPVs as they may benefit, under certain circumstances, from the participation exemption regime on dividends and capital gains derived from the participation in other Spanish SPVs. SOCIMIs are a better fit for investors thinking of holding various urban real estate assets, mainly aimed at generating rent, under the same umbrella.

6.2.2 Limited Liability Companies (“SLs”)

As their name indicates, these are limited liability companies, which allows them to be used as SPVs to insulate against investment risks. SLs are conceived as companies owned by a small number of shareholders (although there is no statutory cap). SLs cannot be listed on a stock market and their shares cannot be entirely freely transferred (especially if compared to SAs and SOCIMIs), but rather are subject to legal and corporate restrictions.

The legal formalities they are subject to are less burdensome than those for SAs, which are envisaged as larger companies with a greater number of shareholders. This degree of flexibility and reduced complexity makes SLs the preferred instrument for investors as SPVs and (due to recent tax developments) Spanish HoldCos. Their equity capital is divided into shares and must be a minimum of € 3,000.

SLs are not subject to limitations in terms of the type of assets they hold, the origin of their income or (subject to certain requirements) the manner in which the income is distributed.

According to applicable legislation, after the 5th year from the registration of a non-listed company, any shareholder who voted in favour of distributing dividends is entitled to exit the company should a dividend of, at least, 1/3 of the legally distributable profits from the previous year not be distributed. The shares of the leaving shareholders are to be redeemed at their “fair” value (as determined by an independent expert appointed by the Commercial Registrar should the parties fail to agree on the fair value or on the valuator and the valuation process).

It is common practice for investors to acquire SLs off-the-shelf (i.e., recently incorporated SLs “for sale”), as this option may offer advantages in terms of cost and timing. It may also shield the identity of the SL’s shareholders as, aside from the original founders, in principle, this information is only made available in the Commercial Registry when the SL is purchased by a sole shareholder.

6.2.3 SOCIMIs

SOCIMIs are a peculiar type of Spanish REIT. They are listed SAs that may benefit from specific tax advantages, most notably a 0% Spanish Corporate Income Tax (“CIT”) rate. Needless to say, the cost of setting-up and keeping a SOCIMI structure is higher than that associated with SLs. After they were initially introduced with a legal framework that did not make them sufficiently attractive (and, thus, only a few SOCIMIs were set-up), subsequent improvements to the applicable regulations made them quite popular amongst investors.

Formal requirements for SOCIMIs

In order to be considered as such, SOCIMIs must:

(i) Have a minimum share capital of € 5,000,000.

(ii) Have a corporate object of (i) acquiring and developing urban properties for lease, (ii) holding shares in companies and entities whose corporate object, investment requirements and dividend distribution policy are similar to those of SOCIMIs, and/or (iii) holding shares or investments in real estate collective investment undertakings.

(iii) Be listed on a stock market, or be wholly owned by a listed SOCIMI or foreign entity that has the same corporate object as a SOCIMI and is subject to a similar dividend distribution policy. For listed SOCIMIs, 25% of their share capital (or shares worth € 2,000,000 if they are quoted on the alternative stock market known as the “Mercado Alternativo Bursátil” or “MAB”) must be free floating on the stock exchange. When quoted on the MAB, the free float requirement can be achieved temporarily, for a maximum of a 1-year period, by retaining a liquidity provider.
There are also information requirements that SOCIMIs must fulfil regarding the tax authorities, their annual accounts statement and stock exchange supervisory bodies.

**Assets and income requirements**

At least 80% of SOCIMIs’ assets must be (i) urban real estate available for lease, (ii) shares in the capital of other SOCIMIs or in similar entities, or (iii) shares or investments in real estate collective investment undertakings. The assets must be held for at least 3 years. Otherwise, all rents resulting from such assets would be taxed at the general CIT rate (25%) with retroactive effects (SOCIMIs not being prevented to apply the 0% rate to all other investments, though).

In addition, at least 80% of the SOCIMIs’ net income must result from rent generated by these assets or the distribution of their income.

**Compulsory dividend policy**

Every year, SOCIMIs must distribute dividends representing at least (i) 50% of the profits derived from the transfer of real estate, shares in subsidiaries and undertakings for collective investment in real estate (while the remaining profits must be reinvested in other real estate or shares within a maximum period of 3 years from the date of the transfer), (ii) 100% of the profits resulting from dividends paid by subsidiaries and undertakings for collective investment in real estate, and (iii) 80% of all other profits obtained.

**SOCIMI tax regime**

SOCIMIs pay 0% CIT, although the general CIT regime applies to (i) income derived from the transfer of property that was held before applying the SOCIMI regime, in proportion to the length of time the SOCIMI regime did not apply (unless proven otherwise), and (ii) rent and income generated by the sale of assets that have not been held for at least the 3-year period.

Spanish companies and non-resident shareholders with a permanent establishment in Spain pay the general CIT rate of 25% on dividends and capital gains resulting from SOCIMIs. Non-resident shareholders without a permanent establishment in Spain pay a 19% rate on dividends and capital gains resulting from SOCIMIs, unless a double-taxation treaty reduces the rate. However, gains may be exempt for non-resident shareholders holding less than a 5% of the SOCIMI’s share capital if the SOCIMI is listed in the official stock market.

Additionally, SOCIMIs bear a special tax of 19% on the dividends they distribute to shareholders holding at least 5% of the SOCIMI’s share capital, when such shareholders would be taxed at less than 10% for these dividends (this is not applicable when the shareholder is a SOCIMI).

### 6.3 Property finance

#### 6.3.1 Real Estate Loans

The principle of freedom of form applies to financing transactions. Spanish law stipulates that a loan (irrespective of the security related thereto) should be documented in writing but does not require a specific type of document (private agreement, deed, etc.). However, in order to secure certain procedural advantages in the event of enforcement, loan agreements are usually executed in the form of a deed witnessed by a notary public.

#### 6.3.2 Mortgage-backed Loans

The traditional structure of securities in Spanish market has always been led by a mortgage encumbering the real estate asset(s).

**Concept**

A mortgage is an in rem guarantee (unlike a personal guarantee as described below). It entitles the creditor to enforce its rights against a property.

**Form and legal requirements**

Real estate mortgages are executed or amended in the form of a public deed, which should be filed with the relevant Land Registry—otherwise the mortgage is not validly created—.
The financing of a property project usually entails the borrower granting a complete “security package” comprising in rem securities and personal guarantees to ensure repayment of the loan principal, interest and default interest.

Promissory mortgages (promesa de hipoteca) are also not unheard of in the Spanish market, albeit not that common (they are not in rem rights and therefore create no security for the benefit of the lender until the promise is fulfilled and the promised mortgage created and registered with the relevant public registry).

Pledges
Security packages in Spain typically include pledges. As in the case of a mortgage, a pledge is an in rem guarantee giving creditors preferred payment status over other creditors, for the value of a specific movable asset or amount of other credits or asset rights.

Standard pledges included in real estate financing include pledges over shares and pledges over credit rights (e.g. those arising from the balances in bank accounts, operational agreements, insurance policies or hedging agreements), and pledges can be qualified as financial collateral if certain conditions are met.

Depending on whether possession over the collateral is transferred to the pledgee or not, pledges can be classified as: (i) pledges with displacement (possession is transferred in favour of the creditor); and (ii) pledges without displacement (in which possession remains with the debtor).

Priority
Priority of mortgage interests are governed by the principle prior in tempore potior in iure (i.e., security created earlier has priority over that created later). In the case of real estate mortgages, priority is determined by the date and time on which they are registered with the Land Registry.

However, Spanish law allows creditors to agree on the priority of real estate mortgages, so that they can agree that all the credits have the same priority or a creditor can decide to cede its priority in favour of another.

Enforcement
Spain is one of the jurisdictions in which lenders have full recourse to all assets of the defaulting borrower (not just the mortgaged property), unless agreed otherwise. In addition, the lender may not directly appropriate the mortgaged property from the borrower, but must instead initiate foreclosure proceedings monitored by a court (or, in some cases, a notary) in order to assure that the property is sold at market price.

If a borrower becomes insolvent, the lender cannot foreclose on the mortgage until 1 year after the date on which the insolvency was declared or the date on which a composition agreement with the creditors was approved.

6.3.3 Other common securities and guarantees

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6.4 Urban Planning & Other Special Licensing

6.4.1 Urban Planning

Introduction
Property project developments in Spain must always comply with the corresponding rules and legal standards on urban planning and the administrative licensing of projects.

From an administrative standpoint, Spanish territory is divided into 17 regions, two autonomous cities in Northern Africa and more than 8,000 municipalities. There are three main levels of government: municipal (local entities), regional and the central government.

According to the distribution of legislative powers pursuant to the Spanish Constitution, the regions are the territorial authorities with legislative jurisdiction on planning matters in connection with basic aspects, by state regulations on land, as the state has subject-matter jurisdiction to establish the basic conditions guaranteeing the equal exercise of rights and fulfilment of constitutional duties regarding land.

Spanish municipalities have a fundamental role in urban planning as they are vested with the powers to initiate and, in some cases, conclude the approval process of planning instruments affecting their territory. Further, property project licensing is a public duty entrusted to municipalities.

Urban planning in Spain
Urban planning in Spain is subject to various principles including the principle that urban development must be carried out in furtherance of the general public’s interest and urban sustainability.

Although some particularities may exist depending on the specific region, there are two levels of planning decision: territorial (region) and local (municipality).

The definition of planning at a supra-municipal level would normally correspond to territorial plans (Planes de Ordenación del Territorio) or directives of territorial zoning (Directrices de Ordenación Territorial), the main purpose of which would be to ensure the rational zoning and organisation of the territory as a whole. In addition to those territorial instruments, the regulations of regions usually establish specific projects of regional interest with a supra-municipal projection (physical or functional) that would normally supersede local zoning regulations.

At a local level, zoning in municipalities is also structured at the following two levels to develop, complement or improve general zoning regulations.

At the first level, general zoning (planeamiento general), General Zoning Plans (Planes Generales de Ordenación Urbana) define the structure, the city model and its implementation in the urban space of the city. The General Zoning Plan would also include detailed zoning provisions for land that does not require further urban development: consolidated urban land (suelo urbano consolidado).

At the second level, specific zoning (planeamiento de desarrollo), Partial Plans (Planes Parciales) define the specific uses and building typologies permitted, maximum buildable area of the building and every other planning parameter allowing the definition of the final morphology of the buildings. Also at the second level are Special Plans (Planes Especiales), which define, among other elements, the specific provisions for the implementation of public infrastructures. At a lower hierarchical rank, Detailed Studies (Estudios de Detalle) define the specific construction volumes within a specific plot or block and adjust gradients and alignments.

As previously mentioned, the zoning classification of the entire municipal territory is carried out through the General Zoning Plan. Although differences may exist depending on the region, the land within a municipality will usually be divided into three different classes: rural land (suelo rústico or suelo no urbanizable); urban land (suelo urbano), which can either be consolidated or non-consolidated; and land suitable for development (suelo urbanizable), which can either be divided into planned units or not.

In general, real-estate projects can only be developed on land classified as urban land or land suitable for development.
Unlike urban land, for land suitable for development, since the urban development process has not yet been completed, real estate projects will require the prior fulfilment of a number of legal obligations inherent to the legal framework of this category of land.

**Licensing of property projects**

Once the urban development of a site has been completed, the construction and effective use of the relevant buildings is possible, subject in all cases to administrative requirements (sworn statements, various licenses and permits) allowing public local authorities to control that the constructions and the activities carried out on these new constructions comply with planning and environmental regulations.

Spanish regulations on administrative mechanisms to control citizens’ activities have evolved significantly in the wake of the approval of Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market (the “Services Directive”).


At a State level, regarding licensing, entities can generally intervene in citizens’ activities through various mechanisms:

(i) The issuance of licenses before initiating any activity as well as other acts relating to preventive control. Nonetheless, there is a recent general principle according to which the exercise of activities may not be subject to a license or any other control mechanism, safe for activities that may hamper or affect the environment or historical heritage, public order or public health, or which involve the private use or occupation of goods under public domain, which may be subject to a license or preventive control (if duly justified and proportionate).

(ii) Communication or sworn declaration.

(iii) Ex-post control after initiating the activity to verify compliance.

The regions and local authorities have also adapted their respective regulations to the European and State-level legal frameworks by simplifying intervention procedures in real estate projects, limiting licenses as a mechanism of preventive control to the interventions with most relevance due to their potential impact on the environment, security and protection of historical heritage.

Communications and sworn declarations (as well as ex-post control after initiating activities) have in recent years gained importance in Spain as mechanism for authorizing real estate projects. In general, a sworn declaration is sufficient for a developer to start the execution of a real estate project. The developer declares, at its own responsibility, that the technical project submitted complies with the relevant planning regulations and other sector-specific legislation (environmental, health-safety, etc.). The local authorities would be entitled to carry out ex-post verification of compliance.

Major projects are, however, still subject to preventive control by local authorities through the granting of licenses. The detailed rules regarding licenses are normally established in local regulations, and may be, and usually are, different in each municipality. Local regulations mainly include construction license and first occupancy license (licenses related to the construction works) and activity and opening licenses (licenses related to the activities).

Lastly, reference should be made to the fact that regulations of the regions and local authorities contain specific provisions on the maximum deadline for licensed property projects to be initiated and concluded. The main purpose behind this approach in Spain is to restrict the possibility of developers building, since a project according to specific zoning regulations that might no longer be in force after the construction started.

### 6.4.2 Special Licensing

#### Commercial licensing

**Introduction**

As anticipated, the Services Directive, aimed at ensuring the freedom of establishment and the right to provide services within the Community and the laws transposing it into Spain, transformed Spanish legislation on commercial licensing. The result was the exceptionality of the authorization framework based on the need for services providers obtaining a license from the corresponding authorities prior to performing commercial activities.

As further explained below, given the grounds on which opening, relocation or enlargement of commercial establishments can be subject to a prior authorization —instead of a sworn declaration or similar document to be signed by the operator itself—, in practice only the shopping centres usually need a previous retail licence to be set up. On the contrary, as a general rule smaller retail shops are excluded from the prior control of commercial authorities.

In addition, the commercial license, when it is required, cannot be denied on economic, market or competition grounds, but rather on the grounds that the construction, relocation or
enlargement of a shopping centre have potential detrimental effects on the environment, the territory or the historical-artistic heritage, should that be the case.

**Spanish domestic legislation on commercial licensing**

According to the distribution of legislative powers pursuant to the Spanish Constitution, interior commerce is one of the various areas for which authority is shared between the Central State and each of Spain’s regions.

Under this shared legislative approach, national legislation establishes the regulatory framework that legislation of each region must follow. The framework, established in the National Retail Commerce Law, can be synthetized as follows:

(i) The general rule is that no “pre-authorizations” from the commercial authorities are needed to open, relocate or enlarge retail establishments.

(ii) Nevertheless, a framework requiring prior authorization may be set up by specific regional legislation for cases justified by an overriding reason related to public interest, such as environmental, zoning and planning or historical-artistic heritage reasons. On the contrary, it can never be based on economic grounds.

(iii) If an authorization framework is implemented by a region, regulations must ensure that it is: (i) non-discriminatory; (ii) proportionate; (iii) clear and unambiguous; (iv) objective; (v) made public in advance; and (vi) transparent and accessible.

The authorization framework is usually created by the regions for large commercial centers. The following sections offer three examples of the practice as governed by regional legislation.

**Brief reference to the legislation of specific regions**

**Madrid:** Commercial legislation enacted by the Region of Madrid is among the most respectful of the principle of freedom of establishment and generally does not require any pre-authorization from retail authorities.

Instead, Madrid’s regulations establish the mechanics of sworn statements through which the legal or natural persons attests to the authorities, at its own responsibility, that they comply with all legal requirements to open commercial establishments and/or operate commercial activities, evidencing that circumstance by submitting the specific documentation required by law.

Once the sworn statement, together with the complete set of necessary documentation, is filed with the appropriate authorities, the applicant is entitled to perform the commercial activity —without prejudice to the potential necessity of obtaining any other authorizations required by specific regulations—. In any case, the public authorities are entitled to verify the compliance of the application and activity with the legal requirements at any time.

**Catalonia:** The Region of Catalonia’s commercial legislation is more protectionist of small and traditional enterprises.

In general, “medium” and “large” establishments —those with a sales area equal to or greater than 800 and 1,300 sq.m., respectively— are only allowed in urban areas of cities with a population of more than 5,000 inhabitants. “Large commercial-territorial establishments” —those with a sales area of at least 2,500 sq.m.— can only be located in urban areas of large cities, i.e., those with a population of 50,000 inhabitants o more. The possibility of locating any of these categories in the outskirts of the referred cities, in certain exceptional cases, is currently being judicially discussed before the Constitutional Court of Spain.

Moreover, among other more specific cases, “large commercial-territorial establishments” (2,500 sq.m.) are subject to the pre-licensing scheme. When granting the license, the commercial authorities take into account matters such as urban planning, location, mobility, and environmental and landscape integration requirements.

**Valencia:** The Region of Valencia’s commercial legislation does not generally require pre-authorization from retail authorities, instead favoring the sworn statement mechanics (or similar communication, depending on the circumstances).

There nevertheless exists an exception for “commercial establishments with a territorial impact”. These establishments are, in general, those that individually or collectively have a sales area of at least 2,500 sq.m. These establishments require the pre-authorization of commercial authorities, which will be based on criteria that are consistent with the principles of the Services Directive.

It is noteworthy that the regional government is currently processing a “Territorial Action Plan on Commerce” that, if finally approved, will define the criteria to localize new retail establishments —e.g. it will empower the authorities to declare an area as commercially saturated—, among other provisions.

**Tourism licensing**

**Introduction**

Lodging is of course a service provided by the tourism-resort sector and therefore falls under the scope of application of the Services Directive.

The Spanish Constitution grants regions the authority to assume powers for the “promotion and planning of tourism within their territory”. The regions have, in general, effectively assumed this authority on an exclusive basis. Therefore, the corresponding regulatory framework, consistent with the principles under the Services Directive, is found in the respective regional legislation.

We return to our examples of the legislation in three regions, highlighting the common, fundamental features as well as some particularities. Given that in the tourism matter those legislations are somewhat more homogenous, we present them jointly.
6.5 Leases of business premises

Freedom of contract governs lease agreements for business premises. The only exceptions to this general principle are matters regarding lease bonds (the tenant must provide a bond equal to 2 months’ rent) and court jurisdiction (claims must be filed before the first-instance court within the city where the property is located unless the parties have agreed to submit claims to arbitration), which cannot be waived or agreed upon differently by the parties. Any matter not contemplated by the parties in the lease agreement is governed by the provisions of the Spanish Lease Act10 and the Spanish Civil Code.

6.5.1 Initial lease term

The lease term can be freely agreed by the parties, and the average term depends on the type of property being leased. For instance, lease agreements in a shopping centre or retail park would usually be agreed for a 5-year term (subject to renewals), while a lease of a single-tenant office building or large unit in a shopping centre would be agreed for a longer term (10 to 15 years) and even above 15 years in sale and leaseback transactions.

6.5.2 Renewals

There is no statutory right of renewal, and the parties may either expressly exclude or include the possibility of renewal in the lease agreement. It is market practice to include a term providing that any lease renewals be subject to a market rent review. If there is no express provision and the tenant continues to lease the premises with the landlord’s consent for 15 days after the lease has expired, the lease agreement will be tacitly renewed.

6.5.3 Rent review

The Spanish Lease Act does not regulate rent reviews, and parties generally agree annual reviews according to the Spanish consumer price index, published monthly by the National Statistics Institute. Market rent reviews are usually agreed as a condition of renewal and are even found in long-term leases (e.g. a 15-year lease will have a market rent review in the 7th year).

10 Ley 29/1994, de 24 de noviembre, de Arrendamientos Urbanos.

It is market practice to include a term providing that any lease renewals be subject to a market rent review. If there is no express provision and the tenant continues to lease the premises with the landlord’s consent for 15 days after the lease has expired, the lease agreement will be tacitly renewed.

Nevertheless, legislation enacted by Madrid and Catalonia expressly establish mechanisms entitling the respective regional governments to declare an area as “touristically saturated”, which can lead to limitations on, including up to prohibitions against, opening new establishments.

It is noteworthy that the city of Barcelona, following a moratorium, very recently passed a specific zoning-touristic master plan that, in general, localizes the potential new tourist establishments on the outskirts of the city and excludes or limits the possibility of increasing the touristic offerings in the city center, seeking to recover traditional districts for more permanent residential uses.

Brief reference to the specific legislation of the regions of Madrid, Catalonia and Valencia

Legislation in these three regions divides lodging establishment into the following (or equivalent) categories: (i) hotels; (ii) tourist apartments; (iii) camping and caravan sites; and (iv) rural tourist resorts.

Each of these categories is subject to specific requirements, but in all cases the performance of the respective activity and opening of the establishments, or any change in the activity, are subject to the presentation of a sworn statement (or similar) on the initiation of the activity, i.e., these regions have not implemented the pre-licensing framework in this matter.
6.5.4 Service charges

There are no legal restrictions on the landlord’s ability to recover service charges from tenants, and the amount to be recovered very much depends on the tenant’s bargaining power. The tenant’s contribution to service charges is usually calculated on the surface area occupied by the tenant’s premises. Anchor tenants may benefit from caps to service charge contributions or even be able to agree a fixed monthly contribution. Triple-net leases are not uncommon in Spanish commercial lease practice and are usually required by investors’ sale and leaseback transactions. Recoverability of Real Estate Tax (“RET”) is usually an important issue when negotiating leases, as it represents a big cost for the owner.

6.5.5 Lease bond

Upon execution of the lease agreement, the tenant has to provide a bond equal to 2 months’ rent and the landlord must deposit it with the competent authority. The lease bond cannot be reviewed (upwards or downwards) during the first 3 years. From the 4th year onwards, the lease bond will be reviewed in accordance with the terms of the lease contract. Failing that, it will be reviewed, following the rent-review provisions in the contract, so that the lease bond is always equal to 2 months’ rent.

6.5.6 Assignment and subletting

Unless otherwise agreed by the parties, tenants may sublet or assign the premises to any third party without the landlord’s consent. Unless otherwise agreed by the parties, the landlord may increase the rent by 10% for partial sublets, and 20% for total sublets or assignments.

6.5.7 Maintenance and repair

Even though the Spanish Lease Act contains provisions on maintenance and repair duties, it is commercial practice to replace these (on the freedom-of-contract principle) with more landlord-friendly provisions. Typically, the parties agree that the tenant must repair any damage to the premises and perform any actions necessary to keep the premises in a good state of maintenance and repair, and that the landlord carry out any such works affecting the structure and façade of the premises. The tenant is not entitled to carry out repairs that may affect the structure of the premises without the landlord’s written consent.

6.5.8 Insolvency

In general the Spanish Insolvency Act provides for the continuation of the lease agreement in the event of the tenant’s insolvency, as it expressly states that the declaration of insolvency does not affect any existing agreement that provides for reciprocal obligations that both parties have yet to perform.

Any outstanding payment obligations under the lease agreement accrued since the declaration of insolvency onwards will be payable to the landlord directly against the insolvency estate, as these credits will not be integrated in the aggregate liabilities of the insolvency proceedings and thus will not be subject to the moratorium or reduction rules laid down in the insolvency proceedings. An insolvent tenant may reinstate the lease agreement and stop eviction proceedings by the landlord before the declaration of insolvency at any time before the eviction takes place by paying all amounts due, including the landlord’s court costs up to that time. This right to reinstate the lease is allowed only once.

6.5.9 Tax

Spanish real estate leasing activity of business premises is subject to and not exempt from Spanish Value Added Tax (“VAT”) (being the rate in force 21%). According to the Corporate Income Tax Law, the applicable rate for the leasing of Spanish business premises is 25% and the taxable income is based on the adjusted accounting profit of the company. Notwithstanding certain particular rules, expenses of a Spanish company are generally deductible provided that they are linked to the company’s business activities.

Please refer to the Tax Overview section for further detail.

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1 Ley 22/2003, de 9 de julio, Concursal.
2 Notwithstanding the above, a lease agreement (as many other agreements) may be terminated on several insolvency grounds (for instance, a lease agreement executed within two years prior to the declaration of the tenant’s or the landlord’s insolvency detrimental to the insolvency estate).
3 Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades.
6.6 Tax Overview

6.6.1 Acquisition

**Value Added Tax (VAT) and Transfer Tax**

Purchasing newly completed or restored properties should be generally subject to VAT at a rate of (i) 21% if the transfer consists of assets which are not residential (such as commercial or industrial premises) or (ii) 10% in the case of residential properties (including parking spaces and storage rooms transferred together with a particular dwelling). Purchasing used properties would be normally exempt from VAT but subject to Transfer Tax, the rate of which ranges between 2% and 11% depending on the region where the properties are located. However, VAT exemption may be waived, in which case the acquisition would be subject to VAT and not to Transfer Tax, if certain requirements are complied with. In general, the VAT exemption can only be waived if the acquired properties are not residential.

Nevertheless, purchases of properties along with other essential means to conduct a business activity (e.g. management agreements or employees) may, in certain cases, be essentially a “transfer of a going concern” rather than a simple transfer of assets, which would not be subject to VAT but to Transfer Tax.

**Stamp Duty**

Stamp Duty should be payable by the purchaser upon the execution of a notarial purchase deed at a rate between 0.25% and 2.5%, depending on the region where the properties are located. The purchaser should not pay Stamp Duty if (i) the purchase is subject to Transfer Tax, or (ii) the parties document the transfer by means other than a public deed.

**Other liabilities**

Purchasers may be liable for any unpaid in rem taxes (e.g. Transfer Tax, Stamp Duty and RET) as regards the properties if the seller or the previous owners are declared in default. If the purchase consists of a “transfer of a going concern”, purchasers will be jointly and severally liable with the seller for any unpaid taxes with regard to the purchased business.

6.6.2 Ownership

**Rents from the lease of properties**

Spanish resident companies should include rents from property leases in their CIT, which should be taxed at the general 25% rate. Gross rents may generally be reduced by expenses inherent to the business activity (e.g. depreciation or management expenses), with certain restrictions.

Gross rents obtained by non-resident entities should be generally taxed in their Non-Resident Income Tax at rate of 24% (19% if they are resident in an European Union country), except if they operate through a permanent establishment in Spain with respect to the properties intended for leasing. Permanent establishments are taxed in a similar way as Spanish resident companies.

**Value Added Tax**

Property rentals for commercial uses should usually be subject to VAT, at the general 21% rate, as indicated in the Leases of Business Premises section above. Leases of residential properties should instead be exempt from VAT and subject to Transfer Tax, except if the landlords provide services equivalent to those provided by the hotel industry. Although the tenants should pay Transfer Tax if the leasing is not subject to VAT, landlords should be subsidiarily liable for its payment if they do not require the tenants to prove the Transfer Tax return was filed upon the first rental payment.

**Property taxes**

City councils commonly request owners to pay RET annually, at rates ranging from 0.4% to 1.30% on the properties’ cadastral value (which is an administrative value calculated by the authorities on the basis of certain market factors). The so-called metropolitan tax is also requested from owners on an annual basis for properties located in the metropolitan area of Barcelona, at a general rate of 0.149% on the cadastral value of the properties.

**Business Activities’ Tax**

Companies conducting business activities in Spain should pay the Business Activities’ Tax annually for each of these activities (even if they are carried out free of charge) if their annual turnover is higher than a € 1 million and they have been operating for 2 years at least. Companies carrying out leasing activities only should pay the Business Activities’ Tax by applying a 0.1% rate on their properties’ cadastral value.
Levies and other fees
City councils commonly request fees on granting planning permissions or licences, which tend not to be significant, or other duties for garbage collection or the occupation of public spaces. In Catalonia, owners may additionally pay (i) a tax for any residential properties unoccupied for more than 2 years, and (ii) a tourism tax, which is expected to be approved in the near future, affecting temporary or short-term leasings.

6.6.3 Sale

Capital gains
Spanish resident companies should include capital gains from the transfer of properties, determined based on the difference between the transfer price and the tax value of the properties (similar to their net carrying value for accounting purposes but with certain adjustments), in their CIT at the general 25% rate.

Capital gains obtained by non-resident entities should be generally taxed in their Non-Resident Income Tax at rate of 19%.

Value Added Tax, Transfer tax and Stamp duty
Please see the relevant sections on Acquisition of properties above.

Local tax on the increase of value of urban land (“TIVUL”)
Sellers of properties should pay TIVUL on the transaction to the relevant city council. TIVUL is calculated by applying a particular tax rate (up to a 30%) to the land cadastral value (the building value should not count for these purposes), which should be in turn adjusted by a percentage determined by multiplying the number of years that the land has been held by the seller (up to 20 years) by a coefficient ranging from an annual 3% to 3.7%.

6.6.4 General investment structures

Spanish double-tier structure
The use of Spanish HoldCos to invest in Spanish SPVs is currently a common investment structure due to the beneficial tax treatment applicable under certain requirements.

The transfer of Spanish properties through a transfer of the shares of the company owning the properties (the Spanish SPV) by its Spanish parent entity (the Spanish HoldCo) (i.e., as a share deal) has the following treatment:

(i) The transfer of the shares of a Spanish entity by another Spanish entity should be exempt from CIT, regardless of the stake transferred, provided that (i) the seller, prior to the transfer, held a stake, either directly or indirectly, of a minimum of 5% of the share capital of the company, or its acquisition price was at least of € 20 million, (ii) the shares were held by the seller for a minimum of 1 year, and (iii) the subsidiary company which shares are being transferred conducts a business activity for CIT purposes.

However, the Spanish tax authorities also request that incorporation of the Spanish HoldCo corresponds to valid economic reasons and that it does not constitute a mere conduit company incorporated with the main objective of avoiding taxation on the capital gains obtained upon the transfer of its subsidiary.

(ii) A share deal implies the inheritance of the embedded gain in the transferred entity from the difference between the market value and the book value of the properties of the company, which would be taxed at the general CIT rate when the real estate is transferred. Other municipal tax (TIVUL) liabilities may also be inherited by the future acquirer (and thus should be considered when negotiating the transfer price).

(iii) As regards the indirect taxation of the sale, share transfers should be exempt from VAT, Transfer Tax and Stamp Duty, except in cases where the unique intention was to avoid the tax that would have been payable on the transfer of the properties.

(iv) If a share deal is carried out, the acquirer will be liable for any contingency (i.e., tax, labour, administrative or on-going legal proceedings, civil liabilities, etc.) of the transferred entity.

(v) Companies may only be able to carry forward previous tax losses if a change of control occurs under certain conditions.

Spanish SOClMIs
SOCIMIs (analysed in Property Vehicles section above) are investment vehicles whose main purpose should be the lease of urban property assets and which have been widely used in Spain during recent years (after a reform of their regime approved in 2012 with the aim of simplifying it and reducing the obligations required). The SOCIMI regime aims to attract investments in the rental properties market by following similar regulations to those REIT regimes adopted in the United Kingdom and in other European countries, as well as long-established property investment trusts in the United States.

In general, entities applying the SOCIMI regime are investment vehicles listed on regulated markets or multi-lateral trading systems either in Spain or in a state of the European Union or wholly owned subsidiaries of listed SOCIMIs.

Entities opting for the application of the SOCIMI tax regime are generally subject to CIT at a 0% rate if they comply with the investment requirements and restrictions of the regime.
However, SOCIMIs are subject to a special 19% CIT rate in respect of dividends distributed to shareholders that hold at least 5% of the SOCIMI’s share capital and are subject to effective taxation (and not exempt) at a rate below 10% in their state of residence.

For further detail on SOCIMIs and their tax regime please refer to section Property Vehicles above.

**Other vehicles with special tax regimes**

Other special regimes are available for real estate collective investment undertakings investing in real estate assets (taxed at a 1% CIT rate if they comply with certain investment and legal requirements) and housing rental entities, with a 85% / 90% CIT allowance on rents deriving from the leasing of dwellings, under certain conditions.

### 6.7 Labour legislation

#### 6.7.1 Legal framework

To provide some context, the Spanish labour market has traditionally been labelled as inflexible and overly protective of employees’ rights.

Employment contracts are generally regulated by the provisions of the Statute of Workers. Employment conditions are governed not only by legal regulations but also by collective bargaining agreements. Collective bargaining agreements are written agreements entered into between, on the one hand, an individual employer, a group of employers, or one or various employer organisations and, on the other hand, one or various organisations of employee representatives or employee representatives.

#### 6.7.2 Employment contracts

In Spain, there are five main types of temporary contracts:

(i) **Contracts for the performance of a specific task or service.** The term for these contracts is the period of time required for the completion of the service to be rendered. This term cannot be longer than 3 years, although it may be extended by 12 months through the collective bargaining agreement. On the expiration of this contract, the employee has the right to receive a severance payment for an amount equal to 12-days’ salary per year of service.

(ii) **Contract to meet production needs.** These contracts cover excess market demand for products or services. They have a maximum 6-month term, which is calculated within a 12-month period but collective bargaining agreements can extend this term up to certain limits set forth in the law. At the end of the period, the employee will receive the same severance payment that is provided with contracts for the performance of a specific task or service.

(iii) **Interim contracts.** This contract covers the situation in which an employee is hired to substitute another employee who has a right to reserve a job. Its duration is the same as the duration of the right granted to the substituted employee to reserve the job. Although the Statute of Workers does not provide any severance payment at the expiration of these contracts, the European Court of Justice recently held that it is discriminatory to not provide the same severance payment corresponding to the indefinite contract that the interim employee is substituting. Accordingly, the expiration of an interim contract should involve a severance payment for an amount equivalent to 20-days’ salary per year of service.

(iv) **Training contracts.** The aim of this contract is to provide training to young people that have obtained an academic or professional degree within the previous 5 years. It has a minimum and a maximum term of 6 months and 2 years respectively.

(v) **Learning contracts.** These contracts may be entered into with employees under 25 years of age and with those who belong to particularly vulnerable collectives, of any age, without professional qualifications. Under a learning contract, a significant part of the work time must be dedicated to training. The contract’s general term varies from 1 to 3 years.

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6. Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores.
6.7.3 Termination of employment contracts

Termination by the employer
Employees hired with an indefinite or permanent employment contract cannot be dismissed unless provided with a specific legal reason. Fixed-term contracts can be early terminated as per general rules applicable to permanent contracts.

An employer may terminate an employment contract for objective or disciplinary reasons, as well as under a collective dismissal. Each of those forms of termination are subject to certain requirements and formalities. Under dismissal for objective reasons and collective dismissal the employee is entitled to a statutory severance payment.

Should employees consider their dismissal to be inappropriate, they can file a claim against their employer with the Labour Courts. The Courts will listen to both parties and decide whether the dismissal was fair, unfair, or null and void.

A dismissal is considered fair (i) when the reasons alleged for the termination have been proven; (ii) they have sufficient entity; and (iii) the statutory formalities are met. If any of these conditions is not met, the dismissal will be deemed to be unfair. Where dismissals are held to be unfair, employers may choose either to reinstate the employee or to pay them the statutory severance compensation for unfair dismissals. This payment is equivalent to 33 days’ salary per year of service, with a maximum limit of 24 months’ salary.

Spanish regulations provide strong protection against dismissals that relate to certain maternity or paternity circumstances, are deemed to be on discriminatory grounds, or violate constitutional rights. These types of dismissals are considered null and void and the employees are reinstated in the company and paid the salary corresponding to the period from the date of dismissal until their reinstatement.

Termination by the employee
Employees may terminate their employment contracts at will.

This termination must come from an unambiguous decision, either expressed or implied. The employee must serve prior written notice to the employer. As this termination is voluntary, employees are not entitled to receive unemployment benefits.

6.7.4 Social security

Social security cover is very broad in Spain and includes health care, temporary and permanent disability, dependents, retirement, unemployment, death, pregnancy, reduction of working time for legal guardianship, maternity and paternity leave and health risks during pregnancy.

Contributions to the social security system are mandatory from the moment the labour activities start. Contributions are payable monthly by the company and employees. Companies must withhold the employees’ contributions from their salary.

Social security contributions are calculated by applying certain percentages to the individual employee’s contribution base (base de cotización).

The percentages that must be paid by companies and employees are fixed on a yearly basis. For 2017, the rate for common hazards is 28.30% (23.60% corresponding to the company and 4.70% to the employee). For labour accidents and occupational illnesses, only the company makes this contribution and the amount depends on the company’s activity and the employee’s occupation. The rate for unemployment contributions for permanent employment contracts is 7.05% (5.50% corresponding to the company and 1.55% to the employee).

The contribution base itself is composed of the employee’s monthly salary plus the pro-rata part of any remuneration payable over periods of more than 1 month (e.g. annual bonus). These contribution bases are limited each year by maximum and minimum amounts. For 2017, the monthly minimum contribution base is € 825.60 per month, while the maximum contribution base is € 3,751.20 per month.
Europe’s real estate investment market continued to evolve positively across 2016, evidencing a strong capacity to attract foreign investment and a continuous appreciation of its assets. Yield compression in Western Europe averaged 28 basis points. Europe was the world region with the second highest levels of asset appreciation, only pipped to the post by the Asia-Pacific region. The markets of the Iberian Peninsula turned in an even more impressive performance in averaging yield compressions of 46 basis points in Portugal and 50 basis points in Spain.

Trading volumes were down 21% in Europe over the preceding year. This essentially derived from significantly lower investment in the United Kingdom (owing to Brexit) and, to a lesser extent, a shortage of product. Even so, the volume of investment in Europe, in 2016, was the second highest since records have been kept and only superseded by 2015. Evolution in the Iberian Peninsula was similar to the rest of Europe in terms of trading volumes and lower investment levels in 2016 – more sharply so in Portugal (around 30%) than in Spain (6%) – but, in both cases the second highest trading volumes ever recorded in each market.

Cushman & Wakefield expects fresh growth in the European market in 2017, both in terms of value and trading volumes. The real estate market’s growing professionalism, transparency and safety have earned it a status in the financial markets as a valid alternative to other assets classes.

In Europe, a combination of low interest rates and steady economic growth, accompanied by a modest hike in inflation are likely to have a positive effect on occupational markets, which, in turn will sustain fresh growth in investment volumes. Cushman & Wakefield expects 6% investment growth in the European real estate market over 2017, making Europe the region with the second highest growth in world real estate investment, only superseded by Latin America.

As regards estimates on the evolution of value, the European Central Bank’s announcement, in December 2016, that it would be extending its QE strategy up to the end of 2017, changed the expectations with regard to timing of the increase in the ECB’s benchmark rates, which is now expected not to occur until 2020. Interest rate movements have a direct effect on real estate market yields, thus the first increase of yields in Europe is only expected in 2020 according to our forecasts.

Yields will continue to come down in 2017, with expectations of an average 35 basis points contraction in Western Europe. Evolution in Spain will be similar to Europe as a whole, with prime yields expected to contract by an average 37 basis points. The movement will be less intense in Portugal, with an expected average correction of less than 10 basis points.

Rent evolution over the next few years is likely to be equally positive, although growth rates will be modest, in line with the expected economic evolution of the main European countries. Rents are expected to post annual growth of 2.2% in Western Europe. Growth is likely to average 1.3% in Portugal and 6% in Spain. A longer term of 5 years will witness a weakening of rents in Europe at no more than 1%. The Iberian Peninsula is expected to have a greater medium term appreciation potential of 1.2% in the case of Portugal and 4.9% in Spain.

As regards the sources of capital, the Asia Pacific region is likely to supplant North America as the main investor in European real estate. More expressions of interest are expected from investors from geographies such as China, Malaysia, Taiwan...
or South Africa, whose presence in European real estate, has, to-date, been conspicuous by its absence.

Although the investment strategies of the main international players, across the next 12 months, will continue to focus on prime assets and locations, product shortages in many geographies are also likely to fuel the allocation of capital to second-tier products and geographies as well as to urban renovation projects in city centres to make up for the current shortage of prime investment products. Such a build-to-core strategy should be implemented by investors with core-plus risk profiles.

Lastly, another trend in 2017, will be the focus of many investors on “alternative” uses which are extremely appealing in the changing world in which we live. Residential product will be increasingly appearing on the radar of institutional investors, particularly senior housing and student accommodation, as well as parking, healthcare, educational and public sector property.

In a legal and fiscal perspective, Spain, legal and tax reforms over the last 4 years have clearly fostered steady economic growth, which is even more acute in the real estate sector. Clear evidence of this is the reform of the legal regime of REITs (SOCIMIs), or the introduction of new regulations aimed at reducing the bureaucratic burden underlying the licensing process (e.g. single licence for all regions; operating licences based on filing rather than assessment by municipal authorities).

A powerful driver into the prevailing economic confidence was the new labour regime, which undermines the relevance of country-wide trade unions and fuels employers’ and employees’ ability to agree on the most suitable employment conditions for each business. Looking to the future, we at Uría Menéndez are thrilled to see the Government progressively removing barriers to new businesses (e.g. to redesign or revitalise whole neighbourhoods, to change the authorised use of a building from residential to commercial or vice versa) or emphasising the relevance of the role of the private sector in the town planning design (e.g. ensuring that new developments not only meet political or social needs, but are economically sustainable without resorting to public spending or investment).

In Portugal, financial institutions are again willing to finance sound real estate projects. Lenders and borrowers alike are benefiting from the tough lessons of the crisis, the quality and fairness of new market-standard contractual documentation having dramatically increased. New legislation on REITs has been promised by the Government and is likely to serve as a dynamo for a consolidation in the property market. Furthermore, a bad bank solution is being structured to tackle an estimated €33bn load of non-performing loans as well as other non-productive assets, including property, weighting on Portuguese banks balance sheets. The Portuguese solution would probably follow the most recent schemes created in Italy and Hungary that deserved European Commission approval in February. Both these reforms will increase the stability and the dynamics of the Portuguese real estate and financing market.