# 2023

# Iberian Real Estate

# **Investment Guide**

# Index



# Why Invest in Iberia?

The Iberian property market has maintained the strength and vitality regained over the last years and is today extremely active, attracting capital flows from all over the world. Demand levels are still very high, occupational markets are buoyant and all types of real estate are being acquired and managed with increased levels of skill and professionalism.

Despite the recent changes caused by war in Europe, high inflation and rising interest rates, rental levels and capital values remain healthy and there is still some room for improvement. Throughout the last years, the real estate community members have done their best to crystallize this trend. 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, consultants and lawyers.

Both Cushman & Wakefield and Uría Menéndez have played a significant role in this change. We are proud of our contribution but, at the same time, determined and committed to continue adding value, fostering innovation and enhancing best practices to consolidate the Iberian real estate market.

In 2017 we launched the first Iberian real estate investment guide, covering the sector from an economic, legal and tax perspective, with a view to deepening its transparency and efficiency. What follows is the third edition of the guide, combining 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.

**Demand levels are still very high, occupational markets are buoyant and all types of real estate are being acquired and managed with increased levels of skill and professionalism.**

# Economic Overview
## Sun still shining on Iberia

1

## The relevance of Iberia in the context of European retail estate has been growing steadily over the last few years.

Good economic performance, resilience throughout the Covid period, healthy occupational markets and appetite from a plethora of investors from all over the globe have made Spain and Portugal very relevant players in the international arena.

Political and economic uncertainty has of course not passed Iberia by. These are changing times, with war in Europe, high inflation and rising interest rates having a significant impact over the last 12 months. However, Iberia is still perceived as offering a very good risk / return balance and cities like Madrid, Lisbon, Barcelona and Porto are growing in the ranking of investor preferences.

This success has been well reflected in the property market, with record investment, yields compressing further and region-leading figures for rental growth up until the recent change in macro-economic circumstances.

Challenges do of course remain, and investment volumes are likely to be affected in 2023 whilst the current uncertainty about capital values persists. However, the strength of the office, retail, industrial & logistics, hospitality and residential occupational markets will likely induce a strong return to investment activity as soon as buyers and sellers can agree on pricing.

Spain in particular is forecast to remain one of Europe's fastest growing economies. It has shown considerable resilience in the face of internal political wrangling, and while the planned boost to pensions and wages may reverse some recent progress on deficit reduction, it will also help drive consumer confidence.

The affirmation of Portugal continues apace meanwhile. Growing numbers of individuals and companies are choosing to relocate to this country, taking advantage of the excellent business environment and generating significant dynamism for the economy. What is more, a healthy labour market, strong EU funding and booming tourism all auger well for further good performance.

Overall, whilst the growth dynamics of the two countries still differ and there is more reform work to do, both have developed as stronger players in the European economy. Iberia will continue to catch the eye of investors as a result, and whilst interest will focus on larger cities, it will be felt across all sectors, including other emerging growth segments like operational real estate.

| // Portugal | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 5 yrs |
|---|---|---|---|---|---|---|---|
| **GDP** | 5.5 | 6.7 | 1.3 | 2.8 | 2.2 | 1.9 | 1.1 |
| **Consumer Spending** | 4.7 | 5.8 | 0.4 | 1.8 | 1.5 | 1.2 | 0.8 |
| **Government Spending** | 4.6 | 2.2 | 0.4 | 0.4 | 1.0 | 1.3 | 1.5 |
| **Corporate Investment** | 10.1 | 1.2 | 0.8 | 6.6 | 4.2 | 3.8 | 2.3 |
| **Exports** | 13.5 | 17.3 | 3.8 | 1.2 | 2.0 | 2.2 | 0.5 |
| **Imports** | 13.3 | 11.0 | 2.0 | 0.6 | 1.4 | 1.9 | 0.8 |
| **Inflation** | 1.3 | 7.8 | 5.2 | 2.4 | 2.2 | 2.3 | 2.2 |
| **10 year bonds** | 0.3 | 2.2 | 3.8 | 3.9 | 3.2 | 3.1 | 3.1 |
| **Unemployment** | 6.6 | 6.0 | 6.6 | 6.2 | 5.7 | 5.3 | 5.0 |

| // Spain | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 5 yrs |
|---|---|---|---|---|---|---|---|
| **GDP** | 6.6 | 4.4 | 1.0 | 1.9 | 1.8 | 1.4 | 1.0 |
| **Consumer Spending** | 6.0 | 2.4 | 1.6 | 2.2 | 2.4 | 2.0 | 0.9 |
| **Government Spending** | 2.9 | -0.9 | 2.6 | 1.5 | 0.5 | -0.4 | 0.5 |
| **Corporate Investment** | 12.1 | 36.8 | 5.9 | 3.7 | 6.5 | 3.8 | 1.9 |
| **Exports** | 14.4 | 14.9 | 0.8 | 1.6 | 0.8 | 0.5 | 1.0 |
| **Imports** | 13.9 | 7.7 | 0.3 | 2.0 | 1.0 | 0.8 | 1.7 |
| **Inflation** | 6.5 | 5.7 | 3.7 | 2.5 | 2.0 | 1.9 | 1.9 |
| **10 year bonds** | 0.4 | 2.2 | 3.6 | 3.3 | 3.0 | 2.9 | 3.0 |
| **Unemployment** | 13.3 | 12.9 | 13.2 | 13.3 | 13.1 | 12.7 | 11.6 |

Source: Moody's Analytics, Cushman & Wakefield, February 2023.

2

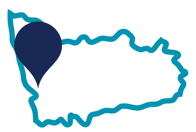
# The Iberian Peninsula

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 sea to the south and east.

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 546,000 inhabitants (2.87 million in Lisbon Metropolitan Area).



Portugal's second largest city is Porto, located in the north with around 232,000 inhabitants (1.74 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, re-elected for a 5-year term in 2021, 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 centre-left government with absolute majority).

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

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

The country has a total population of **47.62 million.**

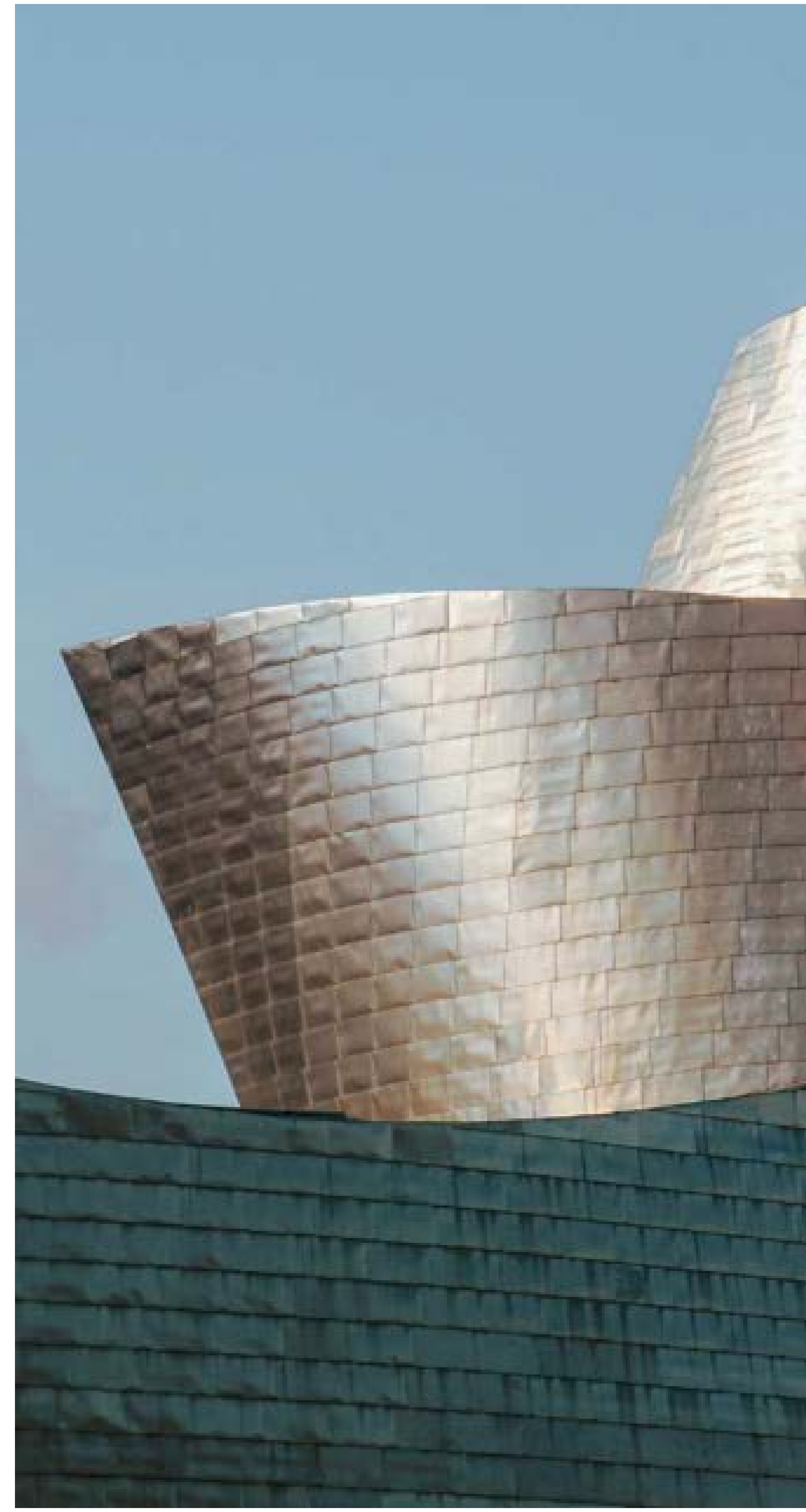
The capital Madrid is the largest city with around 3 million inhabitants (the Madrid region has almost 6.8 million inhabitants).

The second largest city is Barcelona, with 1.6 million inhabitants (the region of Catalonia has nearly 7.8 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, Pedro Sanchez, leader of the interim socialist government.

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

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



# 3

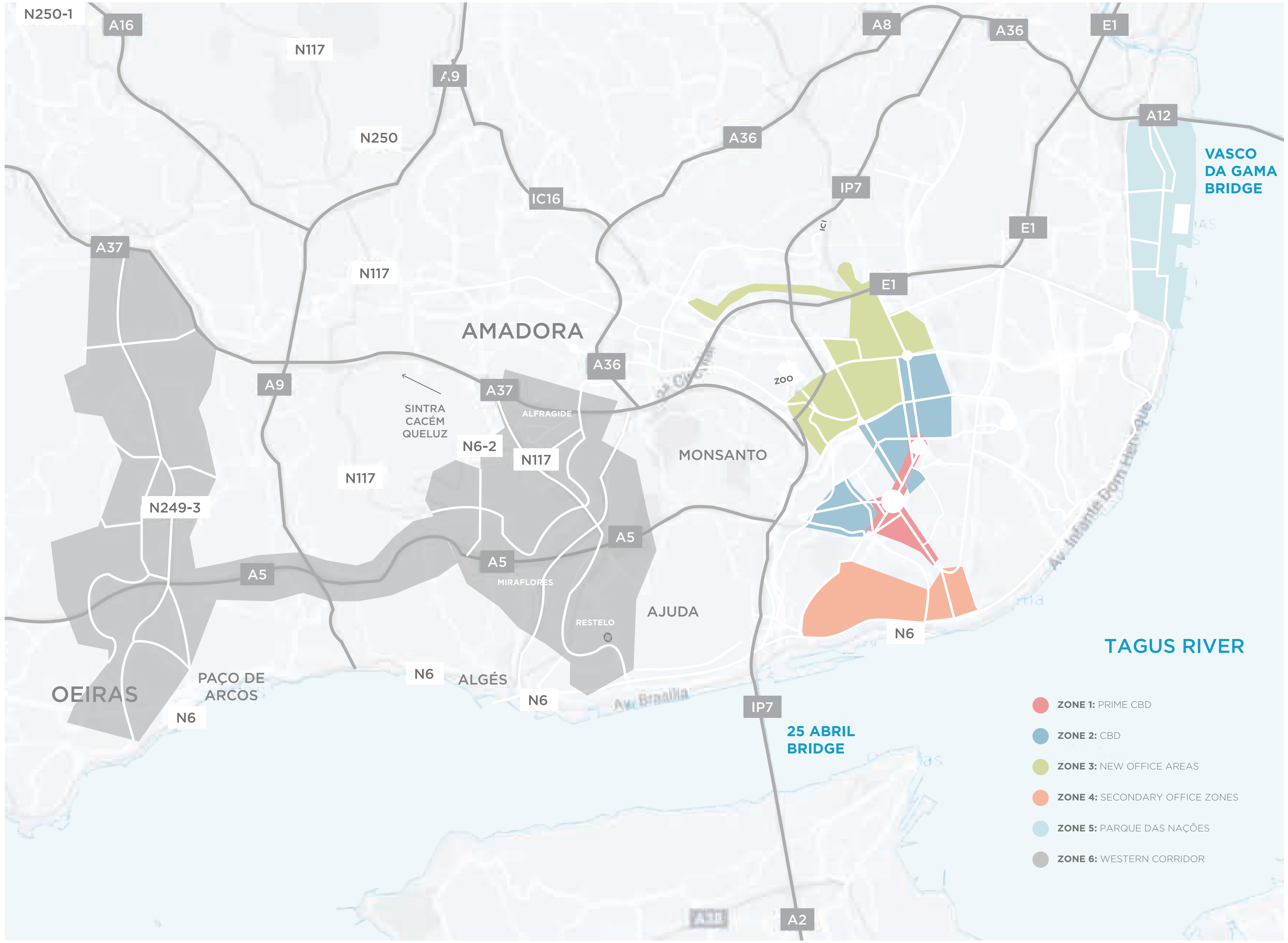
# **Portuguese** Property Market

# 3.1 Offices

## 3.1.1 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 4.47 million sq.m divided into 7 zones.

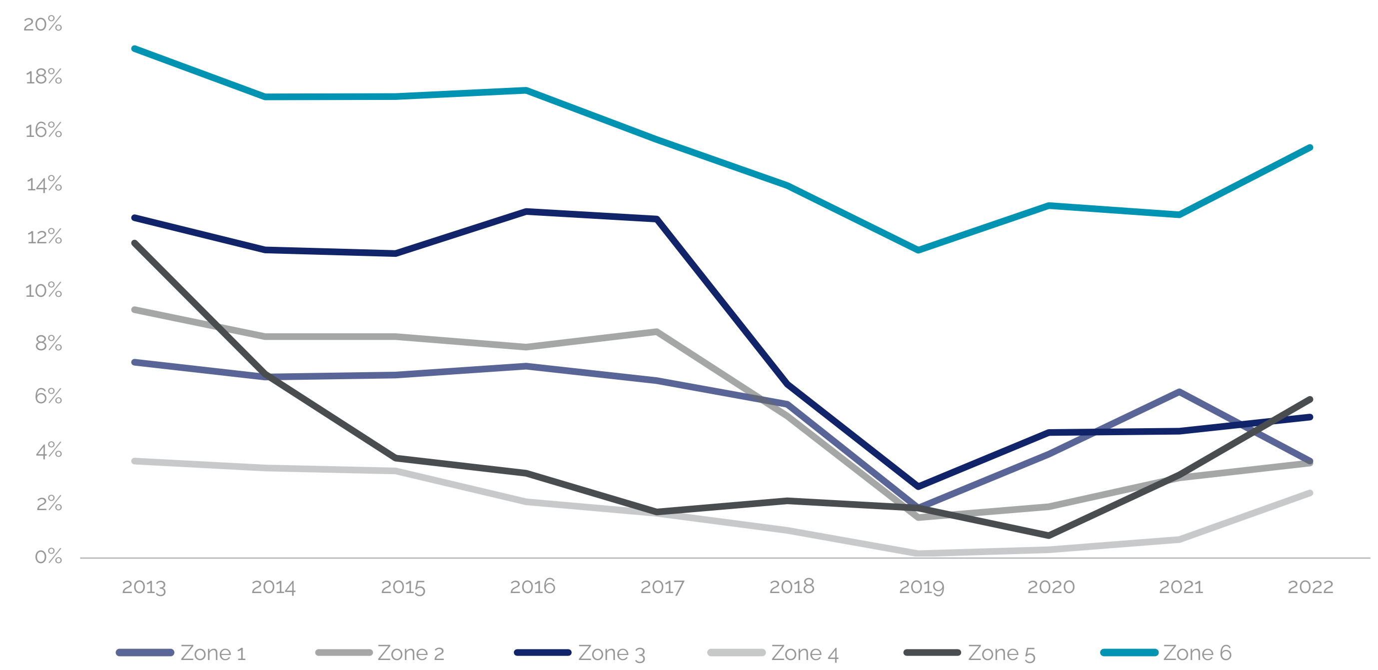
Zones 1 and 2 form Lisbon's central business district, or CBD. Zones 3 and 4, although within the perimeter of the Lisbon municipality, occupy a secondary position but are generally within a 10-minute drive from the city centre and benefit from public transportation. Zone 5 (Parque das Nações) is located 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.



Take-up of office space reached its peak in 2022, with a total of 200 deals and almost 272,000 sq.m transacted, representing a year-on-year (YoY) growth of 68%. Average annual take-up in the last ten years in Lisbon is around 163,000 sq.m.

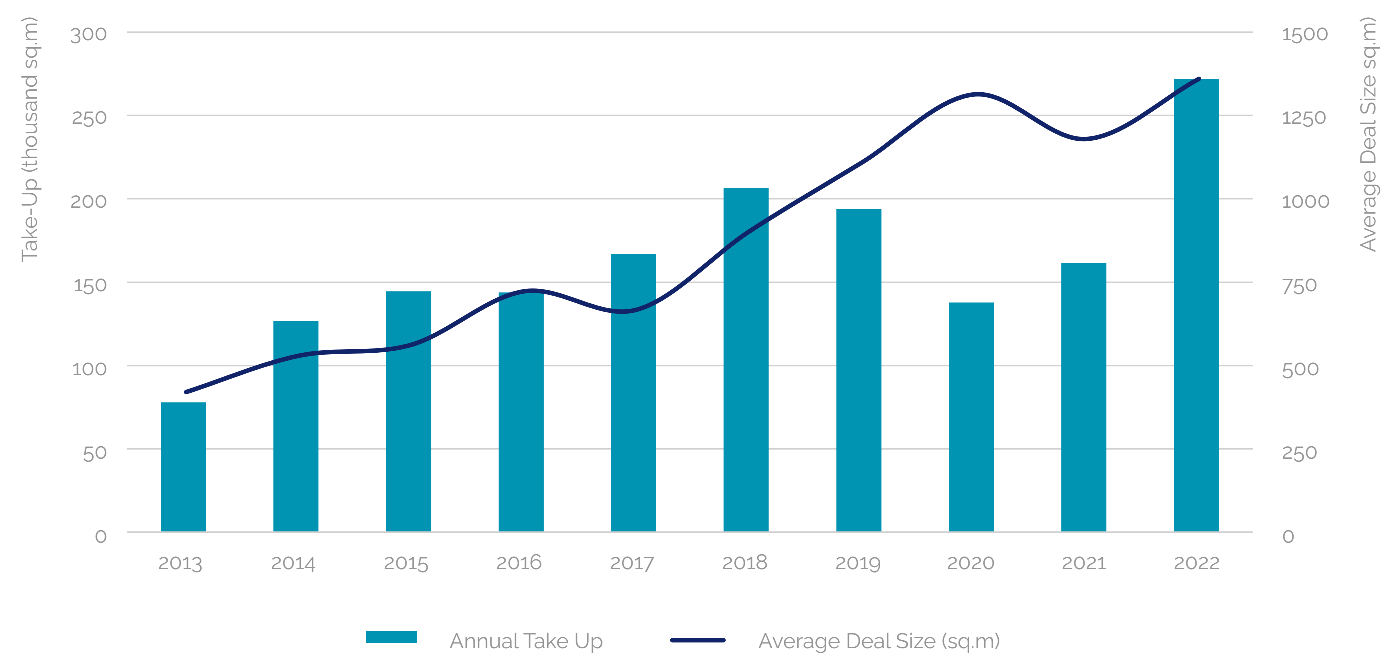
The vacancy rate has slightly decreased in the last quarter of 2022 but it has risen by 1 percentage point when compared with 2021, standing at 6.9%. During 2022, 10 buildings were completed totalling 115,400 sq.m. There are currently 274,400 sq.m under construction of which 50% are either pre-let or for owner-occupation.

## // Greater Lisbon Offices - Vacancy Rate




Source: Cushman & Wakefield

## // Greater Lisbon Offices - Take Up (SQ.M)



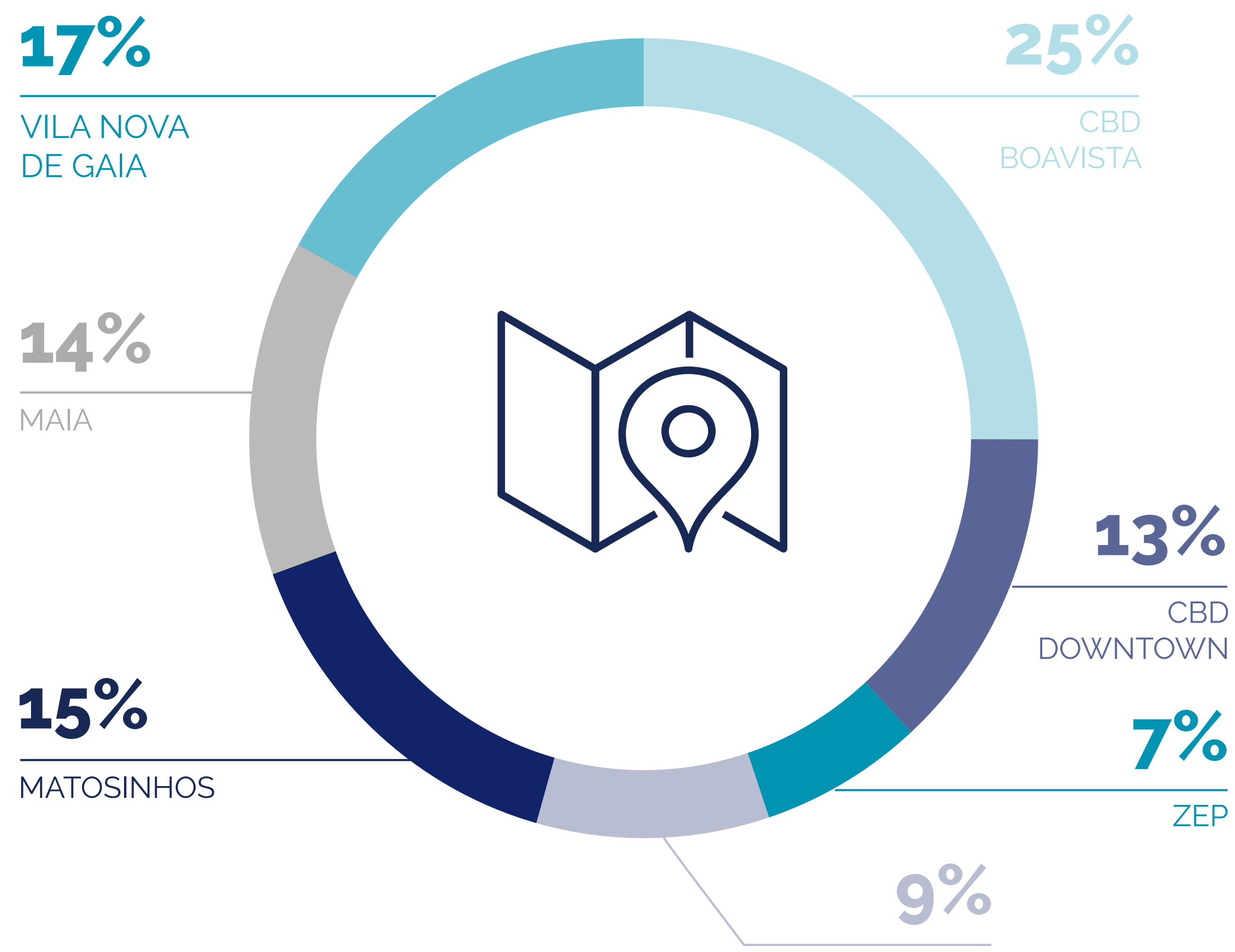

Source: Cushman & Wakefield; LPI (Lisbon Prime Index)

### 3.1.2 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 1.65 million sq.m of GLA, distributed across more than 500 buildings. Porto municipality accounts for the lion's share of supply with around 897,000 sq.m or almost 55% of total office space and more than 260 buildings.

A new source of demand of international occupiers, who consider Greater Porto as an attractive alternative for establishing shared services centres and IT companies, emerged at the end of 2014 and has been growing since then. Demand for office space reached its peak in 2018, with around 85,000 sq.m transacted. The annual average level of demand stood around 56,300 sq.m in the last three years, reaching 58,500 sq.m in 2022 with 76 deals, representing a year-on-year growth of 3%.

// Greater Porto Offices - Stock By Zone




Source: Cushman & Wakefield

**Lisbon's prime rent has been increasing in the last 10 years and stood at €26/sq.m/month, in Q4 2022.**

**In Greater Porto, prime rent has stabilized and stands currently at €18/sq.m/month.**

### 3.1.3 Rents

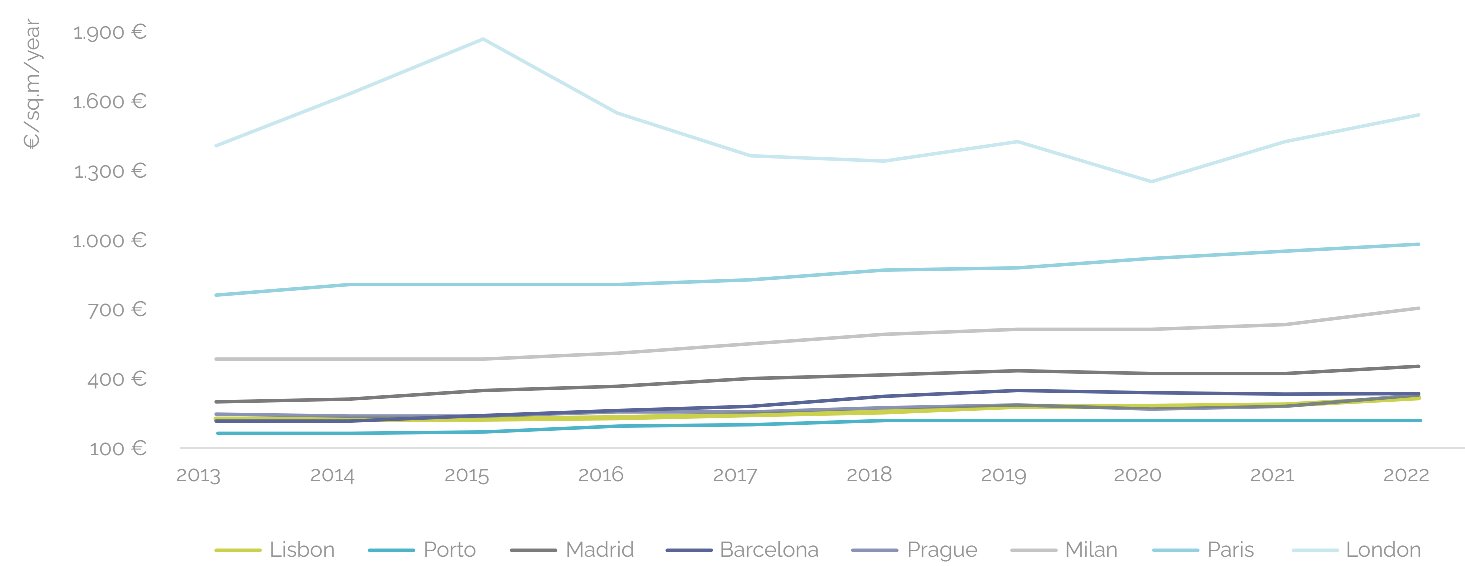
Lisbon's prime rent has been increasing in the last 10 years.

Higher demand, against a shortage of quality supply and the completion of several new buildings, contributed to a rise in headline rental values in 2022. As such, prime rents in the Prime CBD reached €26/sq.m/month in Q4 2022.

Also in Greater Porto, greater occupier activity and the quality of new buildings led to an increase in headline rents in most areas compared to 2021, although prime rental values in CBD Boavista remained stable at €18/sq.m/month.

A comparison between prime rents in some European capitals in the last 10 years indicates a growth trend from 2014 onwards, with higher fluctuations in London city and less volatility in the remaining cities.

## // European Prime Office Rents



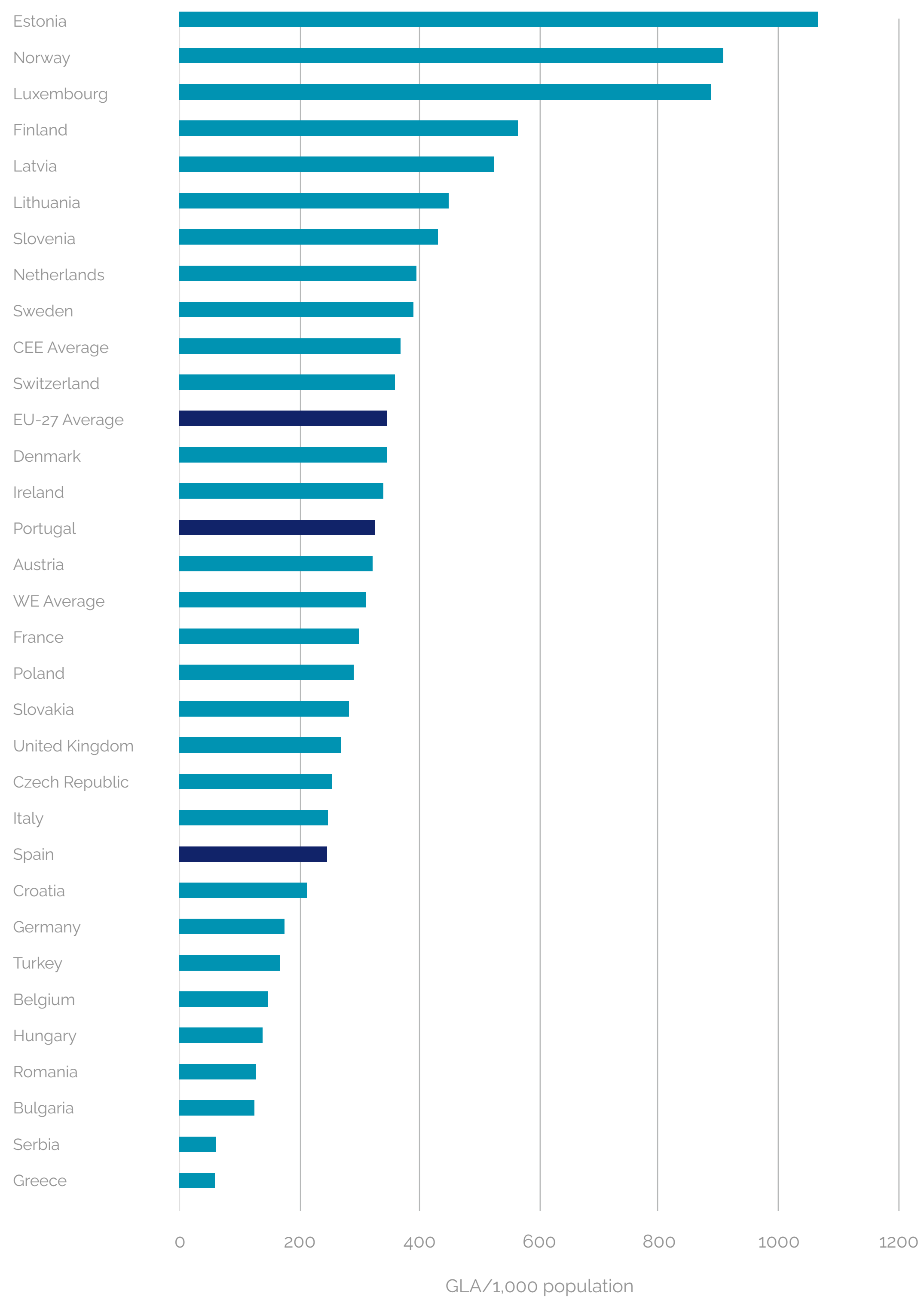

Source: Cushman & Wakefield

# 3.2 Retail

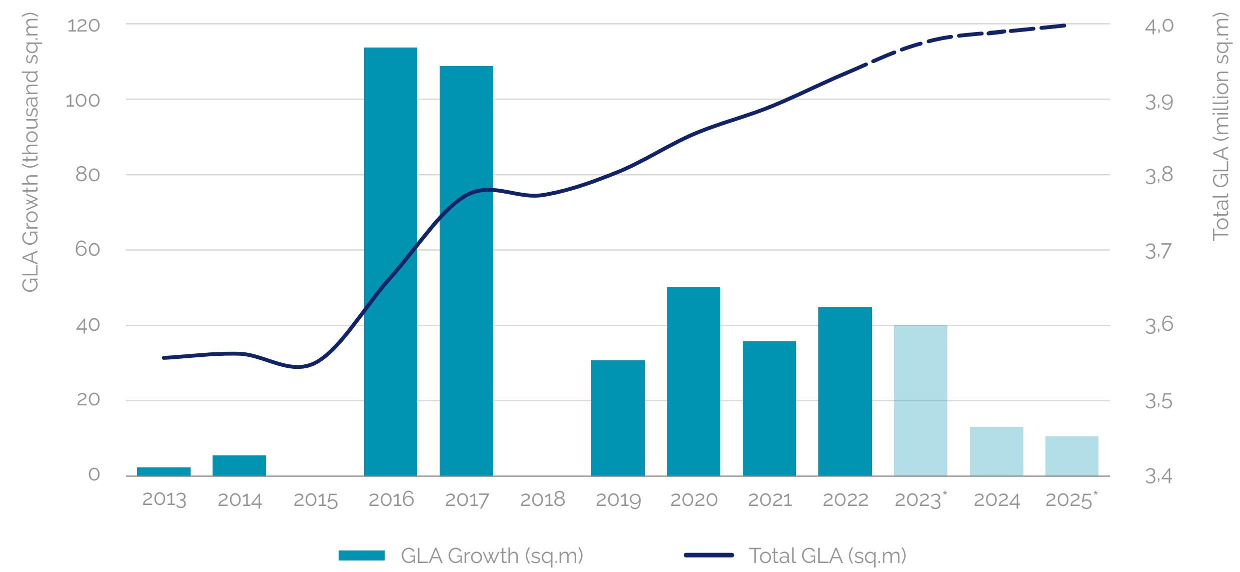
Modern retail space (shopping centres, retail parks and outlet centres) in Portugal amounted to 3.93 million sq.m as at Q4 2022, with shopping centres representing 81% of the total supply, with circa 3.17 million sq.m. Retail parks total more than 565,000 sq.m and outlets centres around 197,400 sq.m. 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 just over 1. million sq.m, and Greater Porto almost 783,000 sq.m.

In terms of new development, the increased activity in the retail park segment continues, fueled by retailer demand, including brands new to Portugal, which prefer this format to enter the market. By contrast, recovery in the shopping centre segment is not homogeneous, with a continued focus on repositioning of existing centres and/or implementation of new concepts. During 2022, the refurbishment and expansion of Albufeira Terrace was concluded and 3 retail parks were opened to the public, namely the Sudoeste Retail Park (Silves) and the retail area of the Alagoa Office & Retail Center (Oeiras) totalling 44,700 sq.m of GLA. By 2025, the completion of a further 63,500 sq.m of GLA is projected, of which more than 50% correspond to retail parks.

## // Shopping Center GLA / 1,000 Inhabitants*

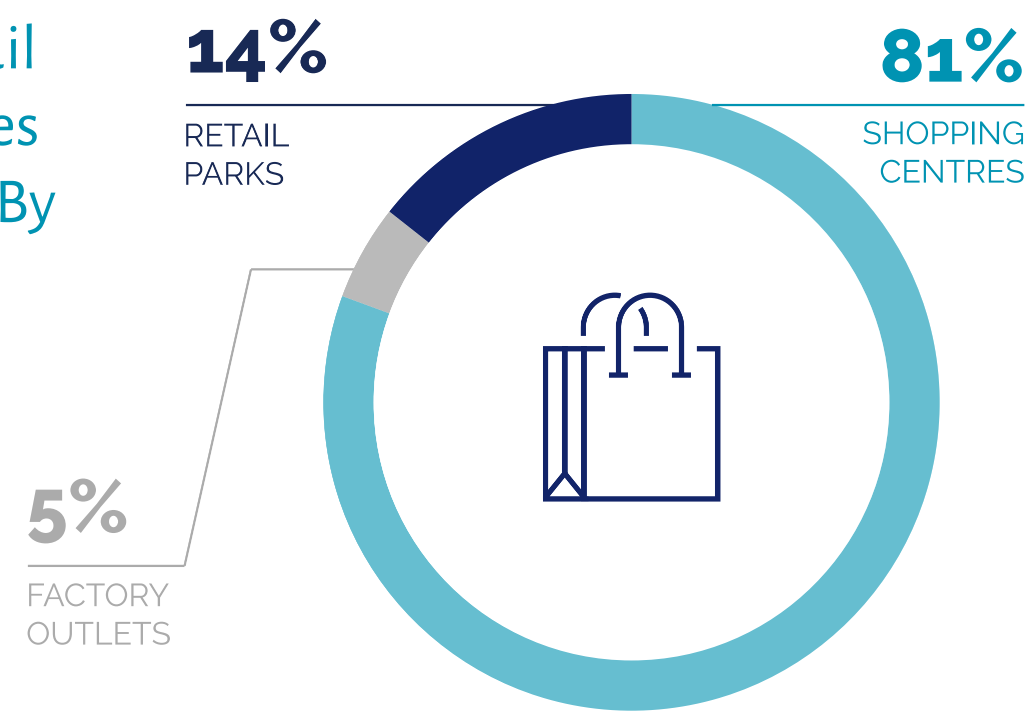



## // Retail Schemes - Total Offer

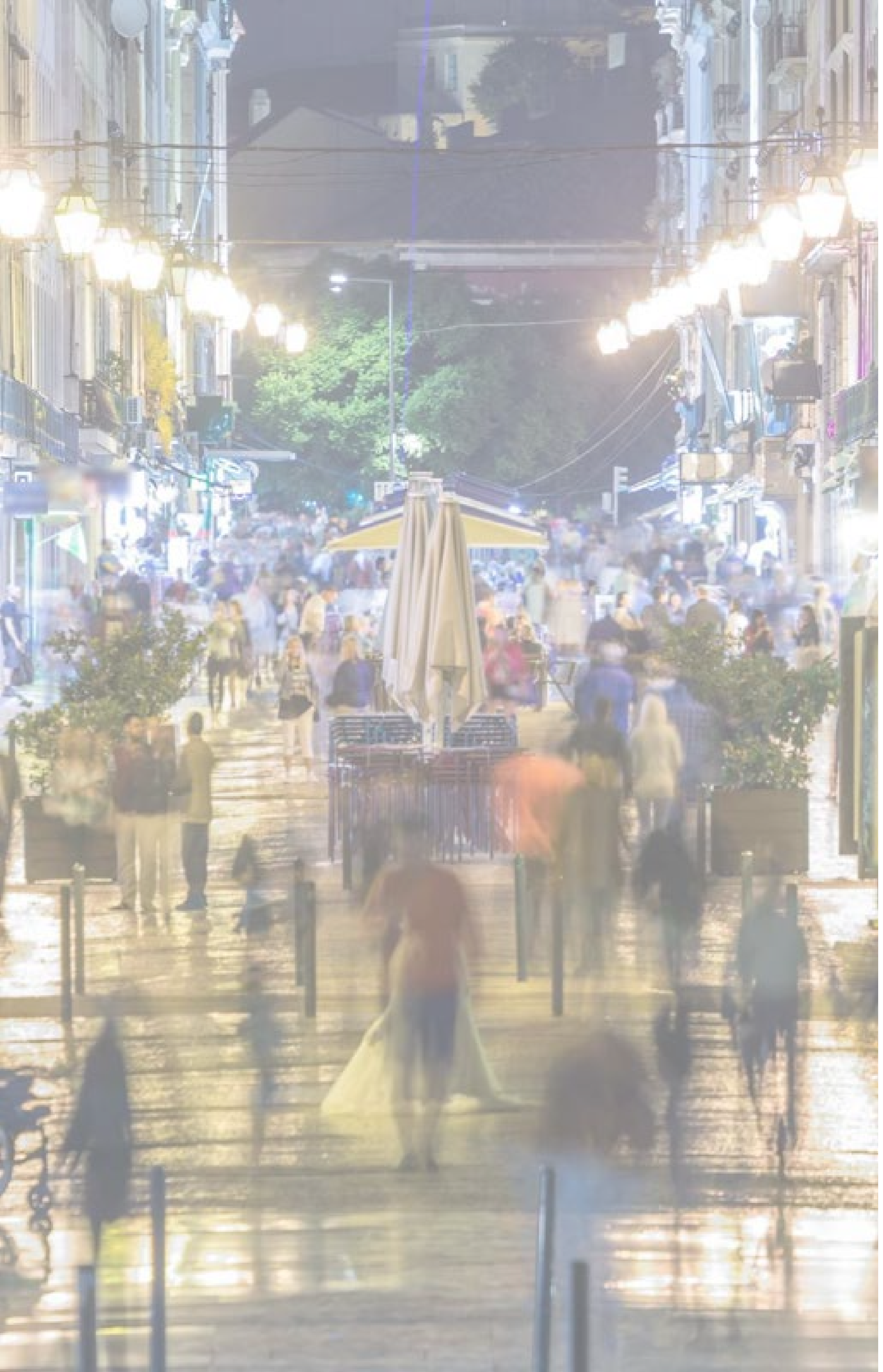



Source: Cushman & Wakefield
* Forecast

## // Retail Schemes - Stock By Format




Source: Cushman & Wakefield

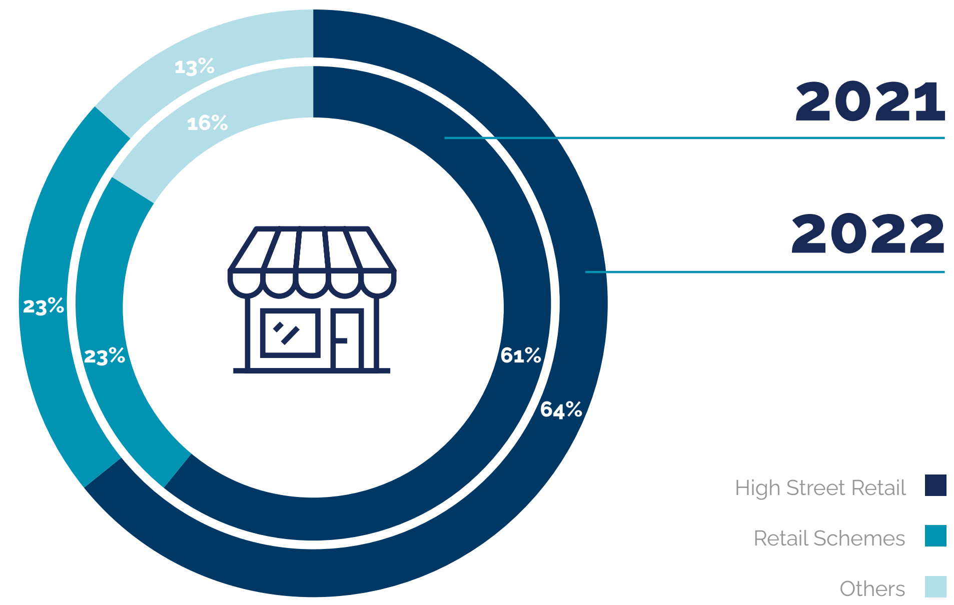


## 3.2.1 High Street Retail

Lisbon and Porto high street retail continues to show a high level of activity, benefiting not only from an increase in the volume of tourists in the city, but also from a change in residents' consumer habits, who today value convenience and proximity retailing. Besides the dynamic of high street retail in the more traditional locations, in the last years new clusters have also been emerging in both cities .

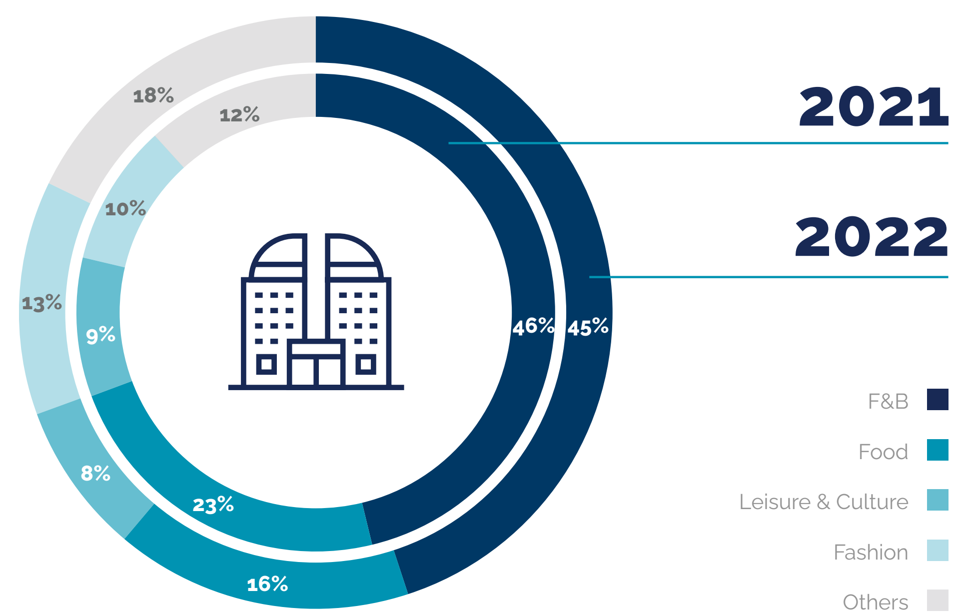
In accordance with Cushman & Wakefield's proprietary transactions database, retail take-up remained stable in 2022 when compared with the previous year, with a total of 560 new openings and an estimated area of 265,000 sq.m. High street retail prevailed, with 64% of total new openings, followed by shopping centres with 18%. Large units remain popular with retailers, namely retail parks and stand-alone units, which together accounted for around 16% of the deals. The Food and Beverage (F&B) sector remained dominant, representing 45% of new openings. Also worthy of note is the growing category of "other retail" that represented 18% of new openings, mainly in the furniture, home decoration and DIY sectors.

### // Take-Up By Format (Nr. Deals)




Source: Cushman & Wakefield

### // Take-Up By Sector (Nr. Deals)




Source: Cushman & Wakefield

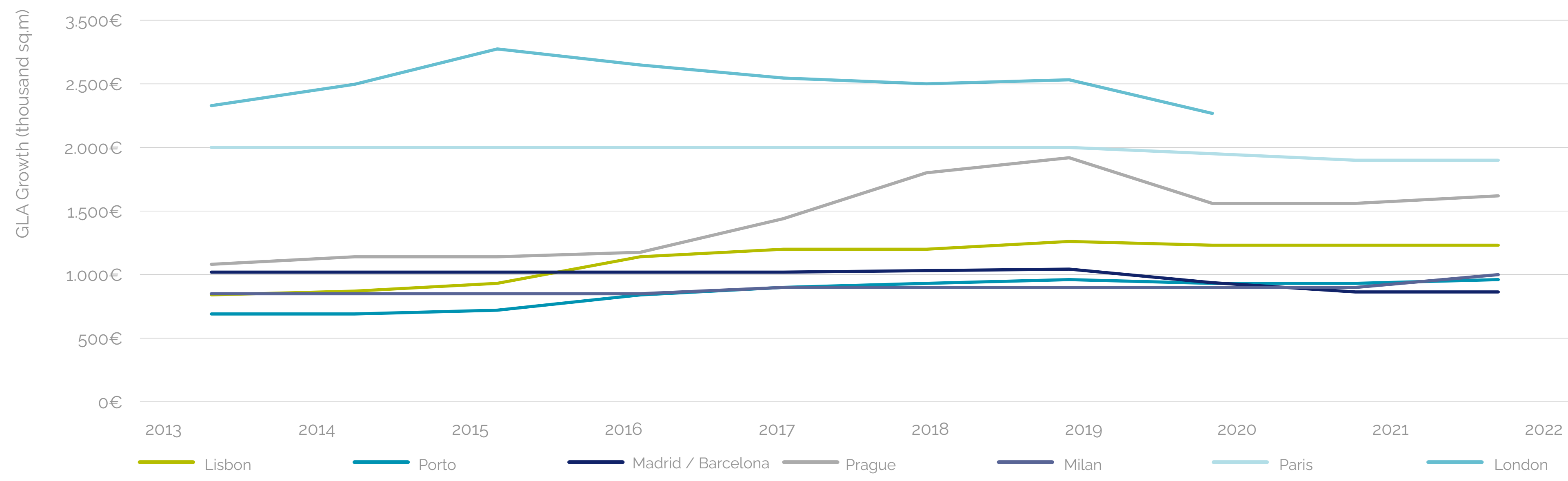
## 3.2.2 Rents

Portuguese retail rents are competitive in a European context and hold strong growth potential. Prime shopping centre rents are currently at €102.5/sq.m/month, and high street rents at €122.5/sq.m/month.

### // Rents q4 2022 (€/sq.M/month)

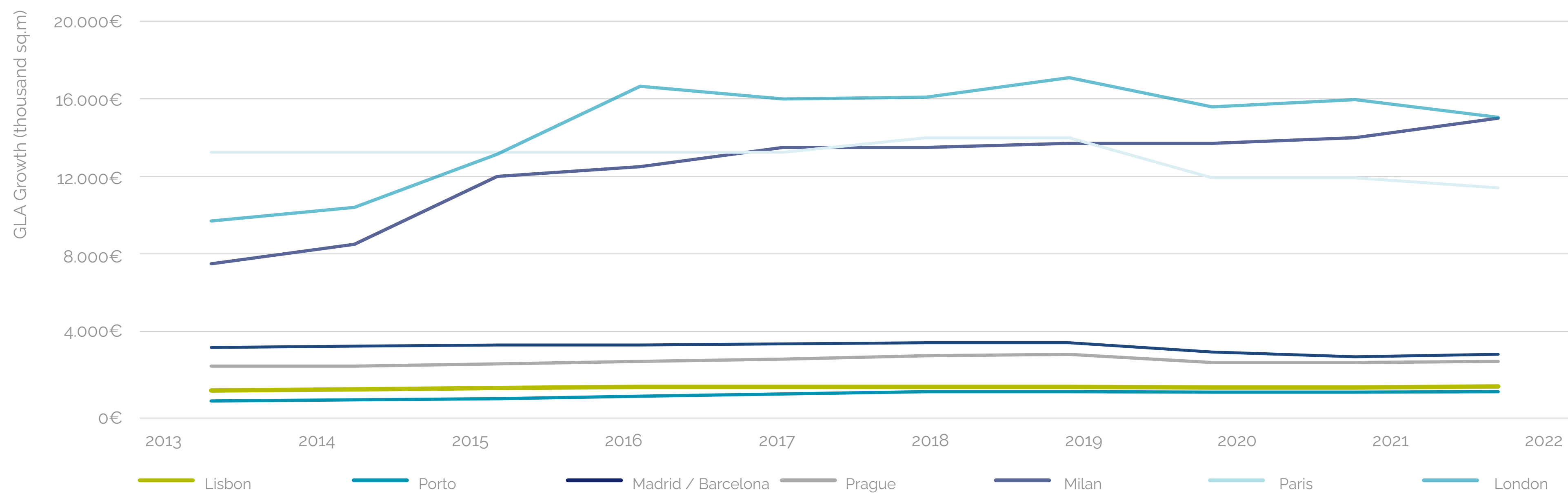
| Format | Location | Prime Rents |
|---|---|---|
| High Street Retail | Lisbon - Chiado | €122.5 |
| | Lisbon - Downtown | €125.0 |
| | Lisbon – Av. Liberdade | €97.5 |
| | Porto - Downtown | €75.5 |
| | Porto – Av. Aliados | €53.5 |
| | Porto – Av. Clérigos | €42.5 |
| Shopping Centres | Portugal | €102.5 |
| Retail Parks | Portugal | €11.5 |

### // European Prime Shopping Centre Rents




Source: Cushman & Wakefield

### // European Prime High Street Rents




Source: Cushman & Wakefield

# 3.3 Industrial and Logistics

In recent years, the industrial and logistics sectors have generated significant interest from investors and registered greater levels of activity. Demand for different types of spaces within the segment continues, both for large-scale (big boxes) and urban logistics (last mile). The main tenants are logistics operators, which are increasingly attracting new clients to Portugal, demanding state-of-the-art assets.

The Greater Lisbon Region concentrates the most sought- after industrial and logistics hubs and is split into 6 zones, as shown on the following map.  Northern Portugal is a very industry-driven region and the Greater Porto region is the second largest industrial and logistics hub in Portugal, after Greater Lisbon.

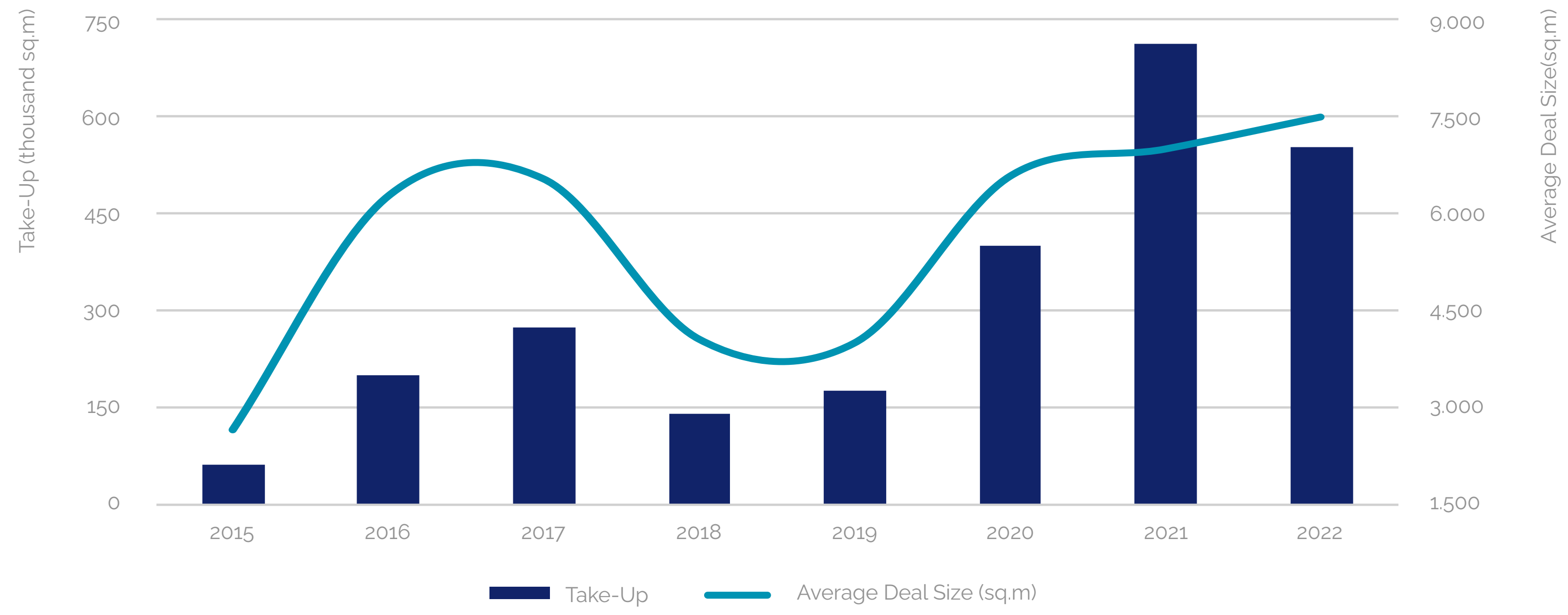
**In recent years, the industrial and logistics sectors have generated greater interest from investors and been registering greater levels of activity.**

After reaching a significant peak in 2021, the industrial and logistics annual take-up in Portugal has slowed down in 2022, registering 200 deals with around 553,100 sq.m transacted, representing a year-on-year decrease of 22%. On the other hand, the average deal size increased to 7,470 sq.m in 2022, influenced by several large-scale transactions.

Given the sector's high levels of activity, investment in quality supply saw an increase through the refurbishment of existing properties or the development of new projects.

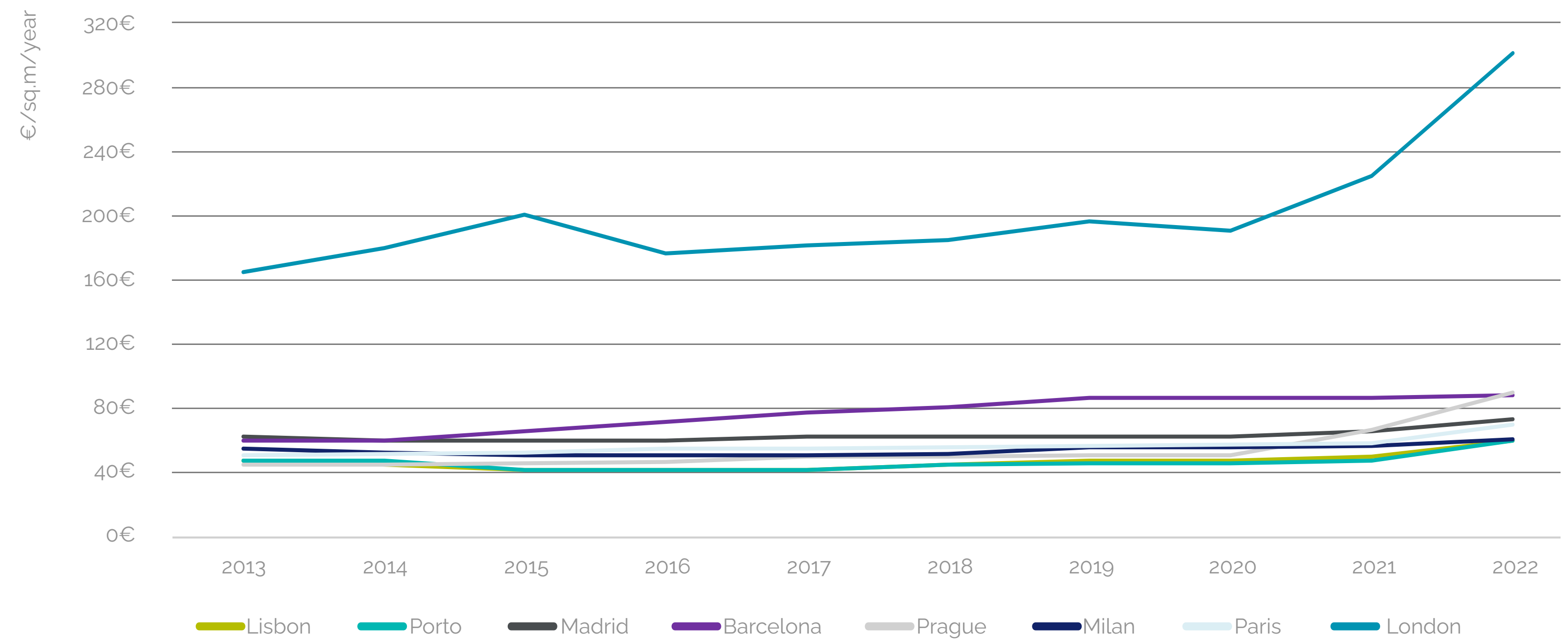
Greater Lisbon's industrial rent levels are still among the lowest in Europe, but have been growing in the last years, currently standing at €5.00/sq.m/month – with the same level for Porto.

## // Greater Lisbon Industrial & Logistics Take-Up




Source: Cushman & Wakefield; IPI (Industrial Prime Index)

## // European Prime Logistic Rents




Source: Cushman & Wakefield

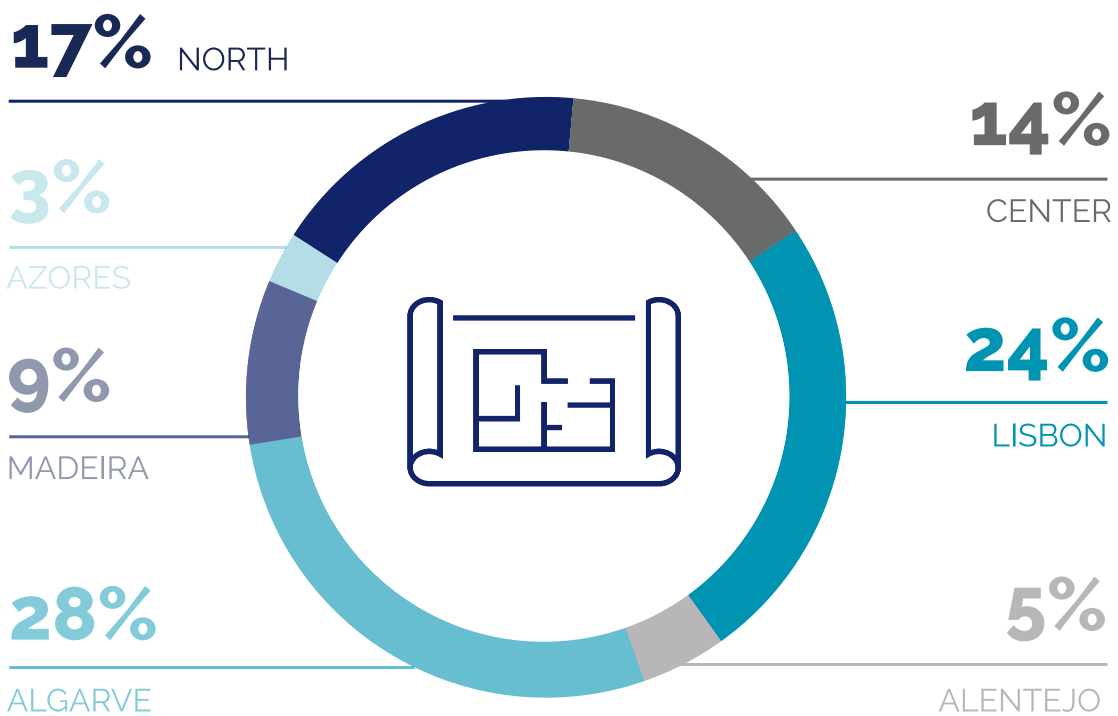
# 3.4 Tourism

Tourism is undoubtedly one of Portugal's main sectors of economic activity. It generated 8% of the country's GDP in 2021 and has recovered spectacularly in 2022. Tourism supply in Portugal at year-end 2022 exceeded 161,000 keys over around 2,170 establishments. The Algarve concentrates the majority of supply in terms of number of keys, followed closely by Greater Lisbon. Porto, in the north, and the Azores islands have become more popular with tourists in recent years. There is still potential for growth and the current pipeline of projects shows almost 130 additional hotels, totaling around 11,300 rooms expected to be delivered by 2025.

In 2022, Portugal reaped the benefits of a major revival in the tourism sector, with all KPIs following an upward trend when compared to the previous year. According to the Portuguese National Office for Statistics, the number of visitors in 2022 was up year-on-year by 86%, to 21.2 million, whilst the number of overnight stays stood at 57.2 million – 89% up on 2021. Both the number of visitors and overnights stays stood almost in line with pre-pandemic levels.

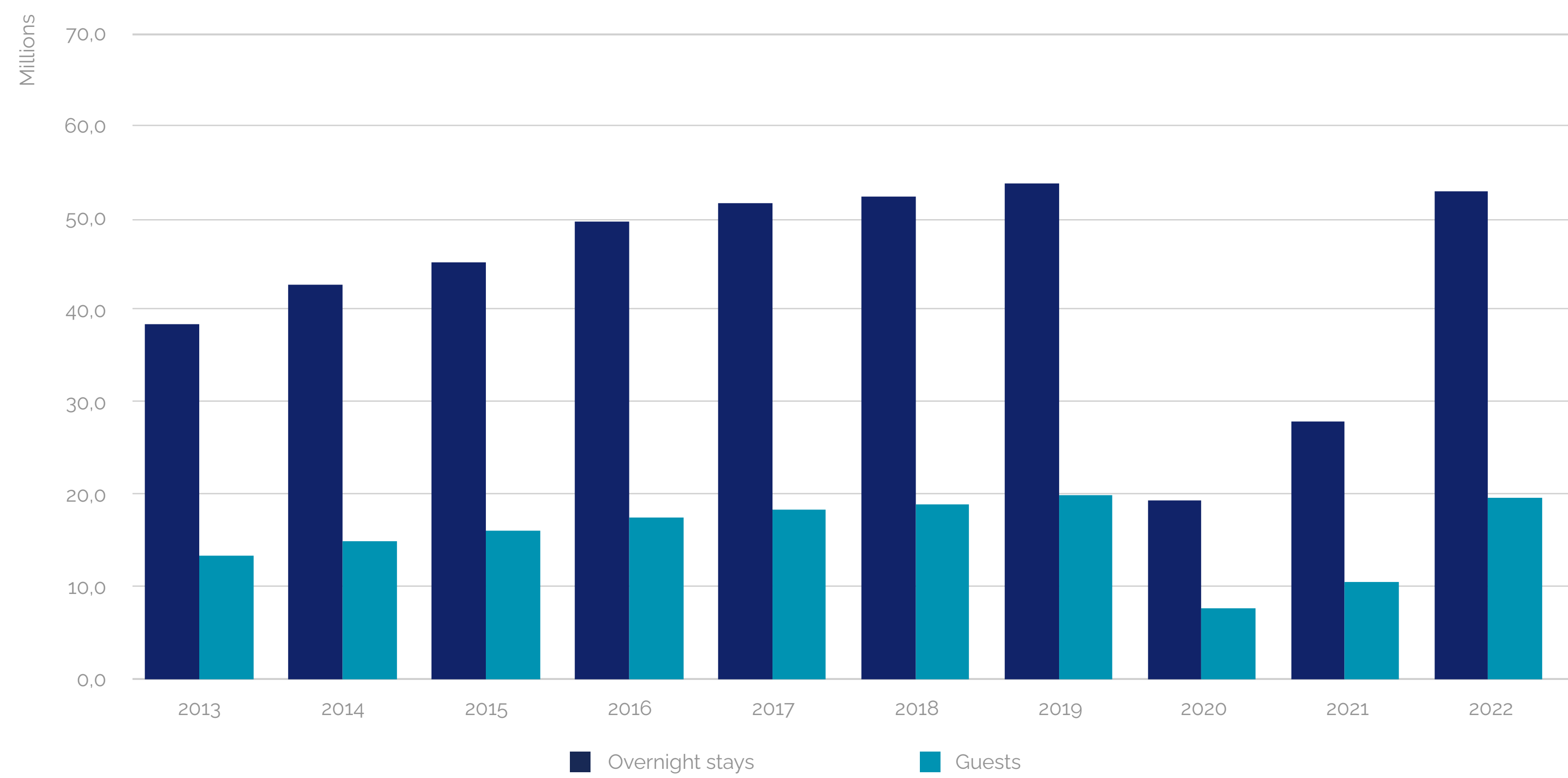
Hotel revenues more than doubled when compared with 2021, totaling €4,370 million and registering a 15% increase when compared with 2019. The RevPAR (Revenue per Available Room) rose to €61.8, also reaching values above the last pre-pandemic year and the country-wide occupancy rate (per room) stood at 61.0%, still 6 p.p. below 2019.

## // Hotel Supply By Region




Source: Cushman & Wakefield

## // Guests & Overnight Stays

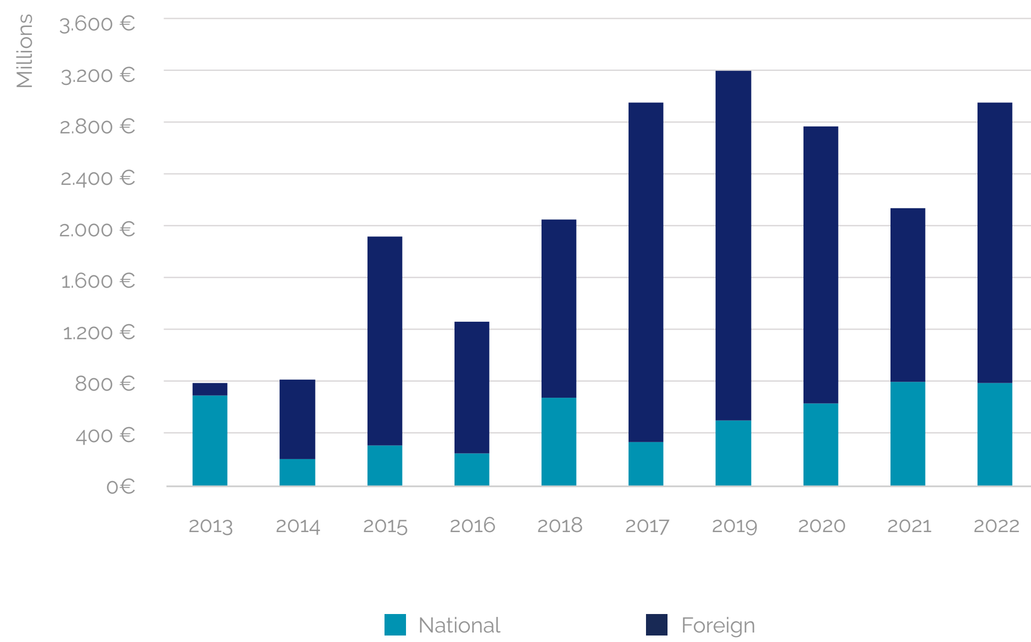



Source: INE; Turismo de Portugal

# 3.5 Investment Activity

Portugal made a significant recovery from the 2008-12 global financial crisis and its property investment market has undergone a substantial structural change It is now a truly international market, with investors from all the corners of the globe and all risk/return profiles. Investment volumes have hovered around the €3,000 million mark since 2018, with some fluctuations due to the impact of some very large deals.

## // Commercial Investment By Origin




## // Commercial Investment By Sector (2013 - 2022)


Despite the decline in investment activity in income-producing real estate during the pandemic period, €2,790 million were transacted in 2020 and €2,162 million in 2021, representing a year-on-year decline of 13% and 23%, respectively, which were less severe drops than in other European markets. The recovery of institutional investment accelerated in 2022, especially in the last quarter of the year, contributing to a total annual volume of €2.982 million in 2022 and reflecting a year-on-year increase of 38%. With a record level of 94 transactions, the average deal size also increased to €32 million, influenced by the increase of foreign capital that represented 73% of the volume invested in commercial real estate, with domestic capital stabilizing at €813 million.

Foreign investors, ranging from core/core-plus institutions to value-add/opportunistic private equity funds, dominate the large retail, office and portfolio transactions, whilst domestic investors are typically more interested in office and industrial property, smaller retail assets and inner-city (re)development.

The hospitality sector attracted the largest share of investment in 2022 (30%), thanks to a very large portfolio deal.

Offices have been a staple of the investment market and attracted 26% of total volume. The industrial and logistics market followed suit and finally picked up pace, with 21% of the investment volume, after a sluggish performance during previous years.

Other sectors have proven to be more and more popular with institutional investors and attracted 13%. By contrast, shopping centres are yet to regain their status as investment products, with the retail sector only contributing 11% of the total volume (mainly food stores and out-of-town retail).

### 3.5.1 Foreign Investment In Property

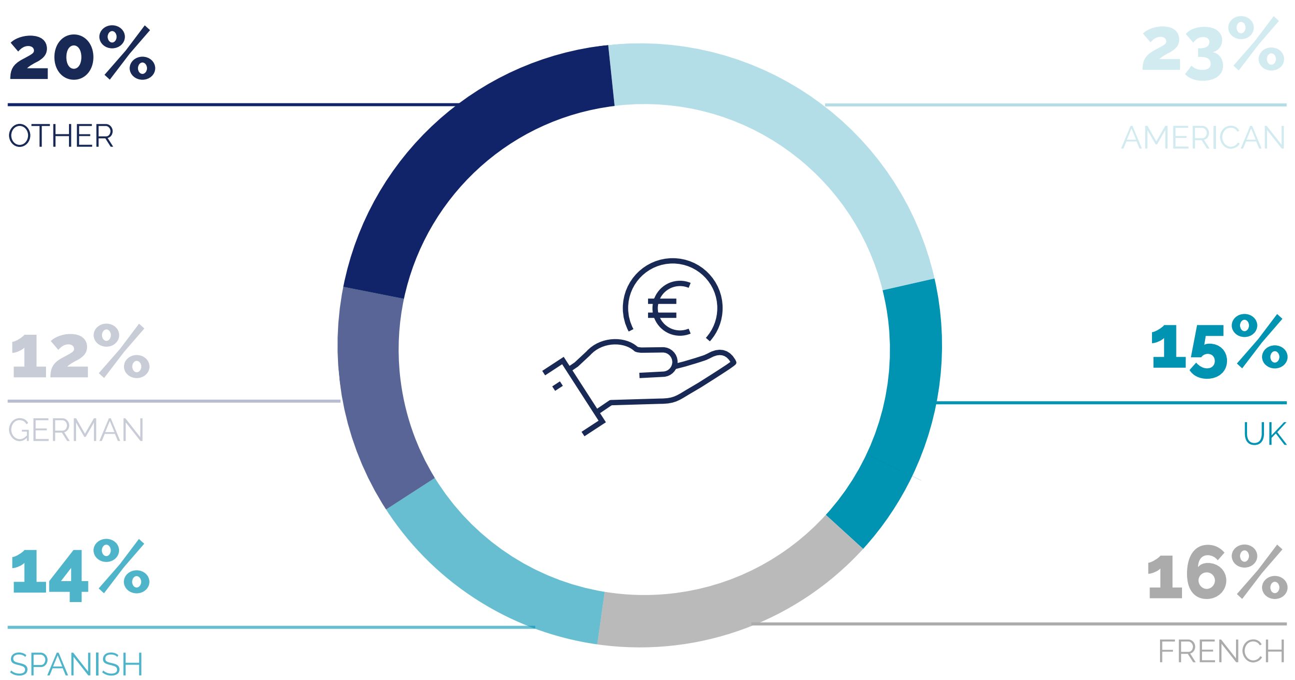
The interest in Portugal real estate investment market has been steadily increasing over recent years. The market is perceived as offering high quality real estate at good value in a European context, as a result of both comparatively low rents and high yields.

Since 2013 more than €15,700 million have been spent by foreign investors in the Portuguese commercial property market, 75% of the total investment volume. Of this, 70% was transacted in the last 5 years.

Although the retail sector has decreased its weight in recent years, it has accounted for more than one third of foreign investment in the last 10 years - 36% of the total, circa €5,900 million. Foreign investors have also targeted large prime office assets, with this sector absorbing 33% of the total foreign investment in the last decade.

Hotels and other alternative assets, such as healthcare and student housing facilities, are growing in importance and the demand from foreign investors for these types of assets has increased over the last few years.

#### // Foreign Investment In Portugal (2013 - 2022)




**Since 2013 more than €15,700 million have been spent by foreign players in the Portuguese commercial property market, 75% of total investment volume.**

**The property investment funds industry has €12,000 million in assets under management, in 213 open and closed-ended funds, managed by 40 asset management companies.**

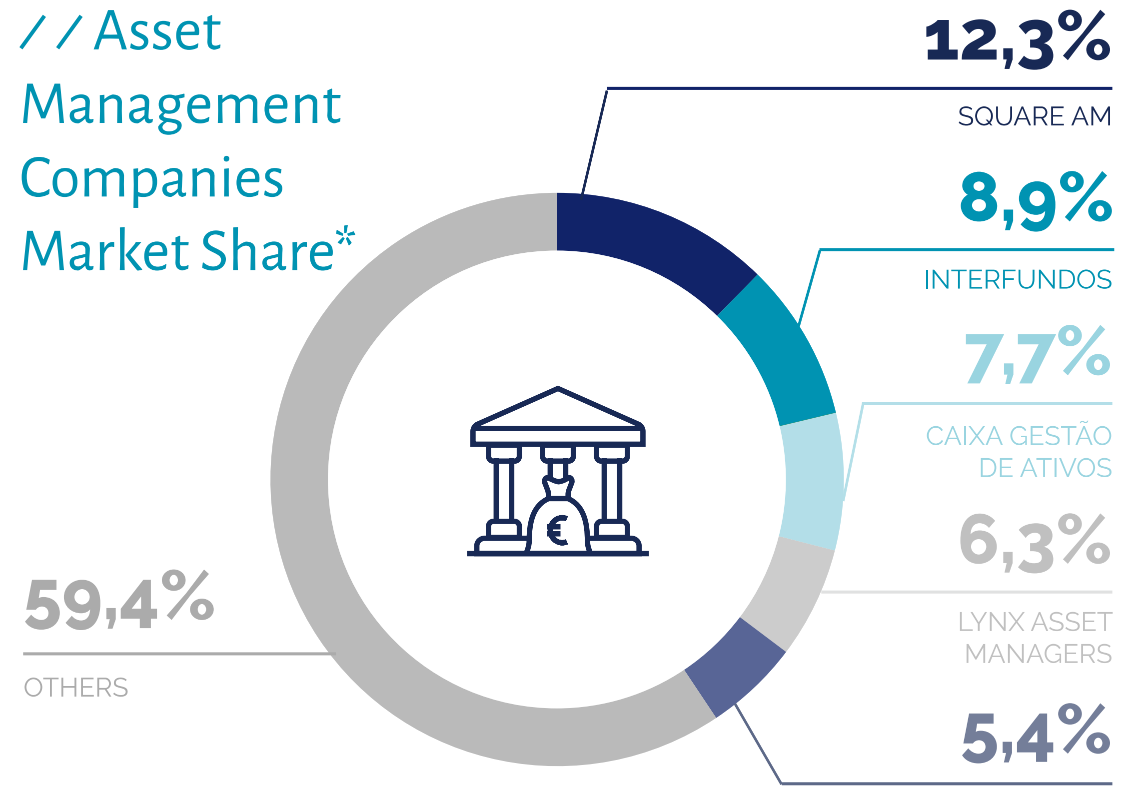
## 3.5.2 Property Investment Funds Industry

The property investment funds industry in Portugal dates back to 1987, when the sector became regulated. The industry has, as of December 2022, around €12,000 million in assets under management, in 213 open and closed-ended funds, managed by circa 40 asset management companies.

Notwithstanding the number of active funds, there is a high degree of concentration in this industry and the top five asset managers account for more than 40% of the assets under management, at around €4,900 million. Closed-ended funds represent the majority of the industry - 63% of the total volume under management by Portuguese real estate investment funds.

An analysis of the industry portfolio shows the dominance of the office market, with current allocations of around €4,600 million, representing 39.1% of the total assets under management by Portuguese property investment funds. The proportion invested in this sector has been gradually growing in the last years, from 35% in 2018. In the last 5 years, the retail sector (especially grocery) also registered significant growth with around €3,000 million of assets currently under management. The residential sector represents 13.3%, currently, with €1,570 million of assets under management. Alternative assets, such as hotels, have also seen a rise in AUM.

### // Asset Management Companies Market Share*




*December 2022 Source: CMVM

### // Real Estate Investment Funds - Investment By Property Sector*


*December 2022 Source: CMVM

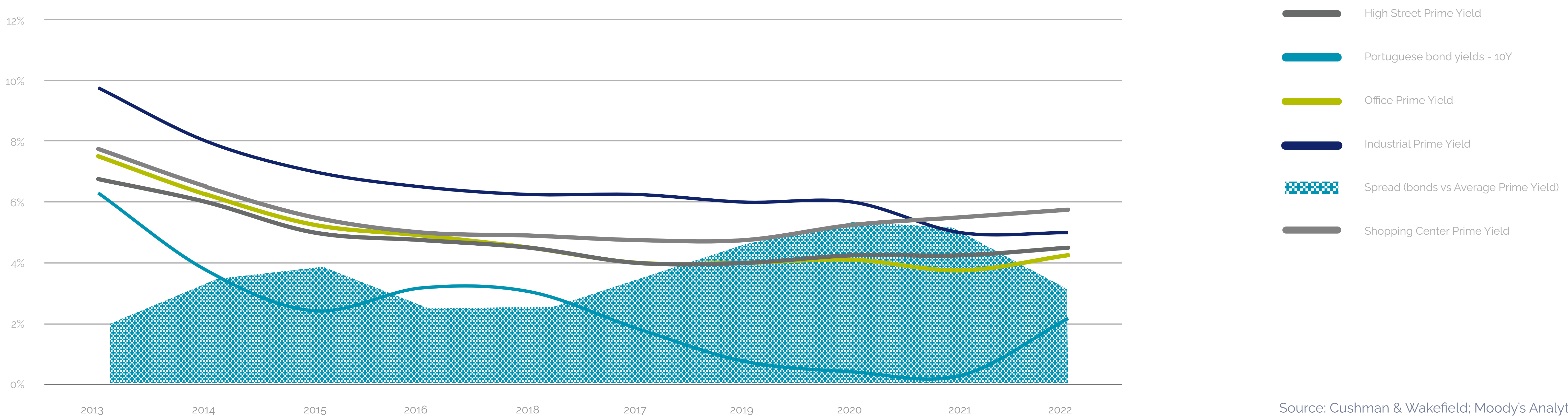
### 3.5.3 Capital Values

After a continuous period of yield compression until 2020, yields adjusted slightly upwards in 2020 - particularly in the asset classes which were operationally most impacted by the pandemic. Some more compression took place until mid-2022, with the third quarter witnessing a change in trajectory. The current economic context contributed to a year-on-year increase between 25 and 50 basis points on the prime yields of the main sectors of commercial real estate in 2022.

Capital values are still under pressure but are partially supported by the strengthening of the occupational markets. Most investors are currently adopting a "wait & see" approach, as they hope to better understand what the "new normal" pricing level will be before resuming their more active purchase activity. Nevertheless, Portugal continues to be a very interesting market to invest, supported by the attractive returns it offers in comparison to other geographies.

**Portugal continues to be a very interesting market to invest supported by the attractive returns it offers in comparison to other geographies.**

## // Portugal - Prime Yields Vs Portuguese Bond Yields




Source: Cushman & Wakefield; Moody's Analytics

# 3.6 Market practices

## // General

| | | |
|---|---|---|
| **Document** | A standard lease contract is drawn up and signed by the relevant parties. Shopping centres sign a so-called "use of shop agreement". | |
| **Enforceability of Lease** | Leases are legally binding on both parties. | |
| **Restrictive user clauses** | Not usually. | |
| **Broker's Fees** | | |
| Leasing | Tenant:<br>Negotiable. | Landlord:<br>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:<br>1% to 3% | Asset value in excess of €10m:<br>0.25% to 1% |

## // Lease terms

| | Office | Industrial | Retail |
|---|---|---|---|
| **Duration of lease** | Typically 5 years. | Typically 3 years. | High Street: Typically 5-10 years.<br><br>Shopping centre: 6 years for shop units, 10-15 years for anchor stores. |
| **Break options** | Old leases:<br>No break option.<br><br>New leases:<br>Freely negotiated between parties – Usually 180 days' notice for both parties in advance of break options or lease term. | | Shopping centres:<br>Traditionally, there are no break options except for anchor stores which may have a break option after 5 or 6 years. |

## // Rental Payments

| | |
|---|---|
| **Rent payment and frequency** | Euro per square meter per month, due monthly in advance. |
| **Rent Deposit** | Bank guarantees are usually provided, subject to a maximum amount corresponding to 2 months of rent (both for the advance payment of rents (*antecipação de rendas*) and for security deposit (*caução*). |
| **Indexation** | New lease: 19/2022, of 21 October, has established a fixed annual rent indexation for the year of 2023 corresponding to 1.02 (i.e 2%), applicable to all types of lease agreements. This means that the landlords will not be able to update the relevant rents in 2023 beyond that percentage.<br>Old lease: Since the 1990's, increased annually according to inflation (as published by the government).<br>Shopping Centres: Usually increased annually according to inflation (based 100% of CPI as published by INE). |
| **Security of tenure** | Old leases: The tenant enjoys automatic securityof tenure.<br>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. |

## // Service Charges, Repairs & Insurance

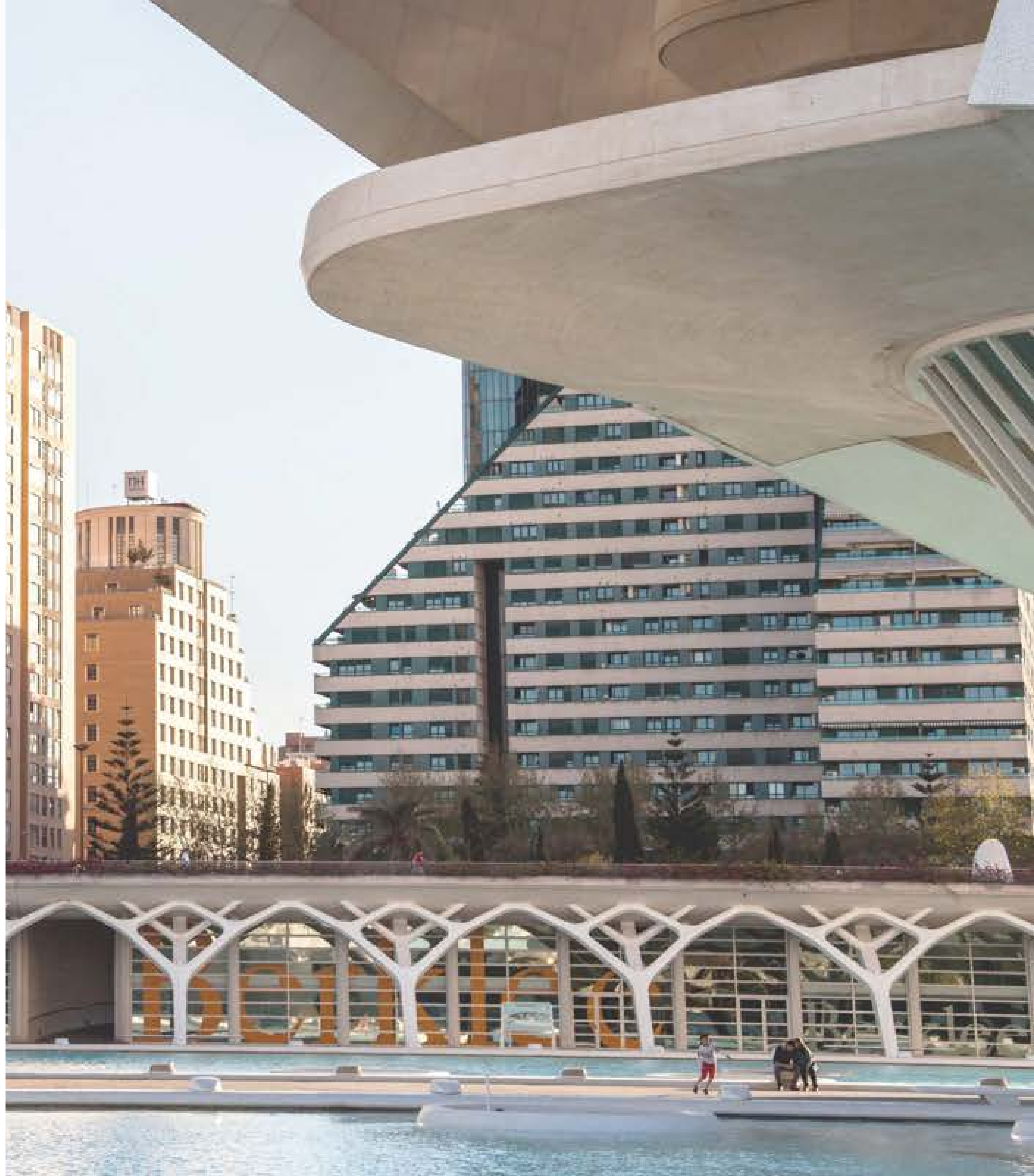
| | | |
|---|---|---|
| **Repairs** | Tenant:<br>Internal repairs. | Landlord:<br>External repairs and maintenance. |
| **Insurance** | Tenant:<br>Contents insurance. | Landlord:<br>Building insurance. |
| **Service charges** | Paid by the tenant. | |
| **Utilities included in service charge** | Common use utilities – Security, maintenance and cleaning of common areas. | |

## // Measuring Code

| | | | |
|---|---|---|---|
| **Measurement practice** | Office:<br>Gross Lettable Area. | Industrial:<br>Gross Lettable Area. | Retail:<br>Gross Lettable Area. |
| **Minimum workspace per employee** (market practice) | 10 sq.m per workstation. | | |

# 4 **Spanish** Property Market





# 4.1 Office

## 4.1.1 Barcelona

Take-up in Barcelona in 2022 amounted to 331,000 sq m, representing the same level as the previous year.

In terms of location, the New Business Areas and City Centre remain the most sought-after by companies. This is to the detriment of peripheral areas, with some 68% of demand being focused on the former.

65% of requirements were met by class A/B+ buildings, exceeding the peak of a total of 63% recorded in 2019.

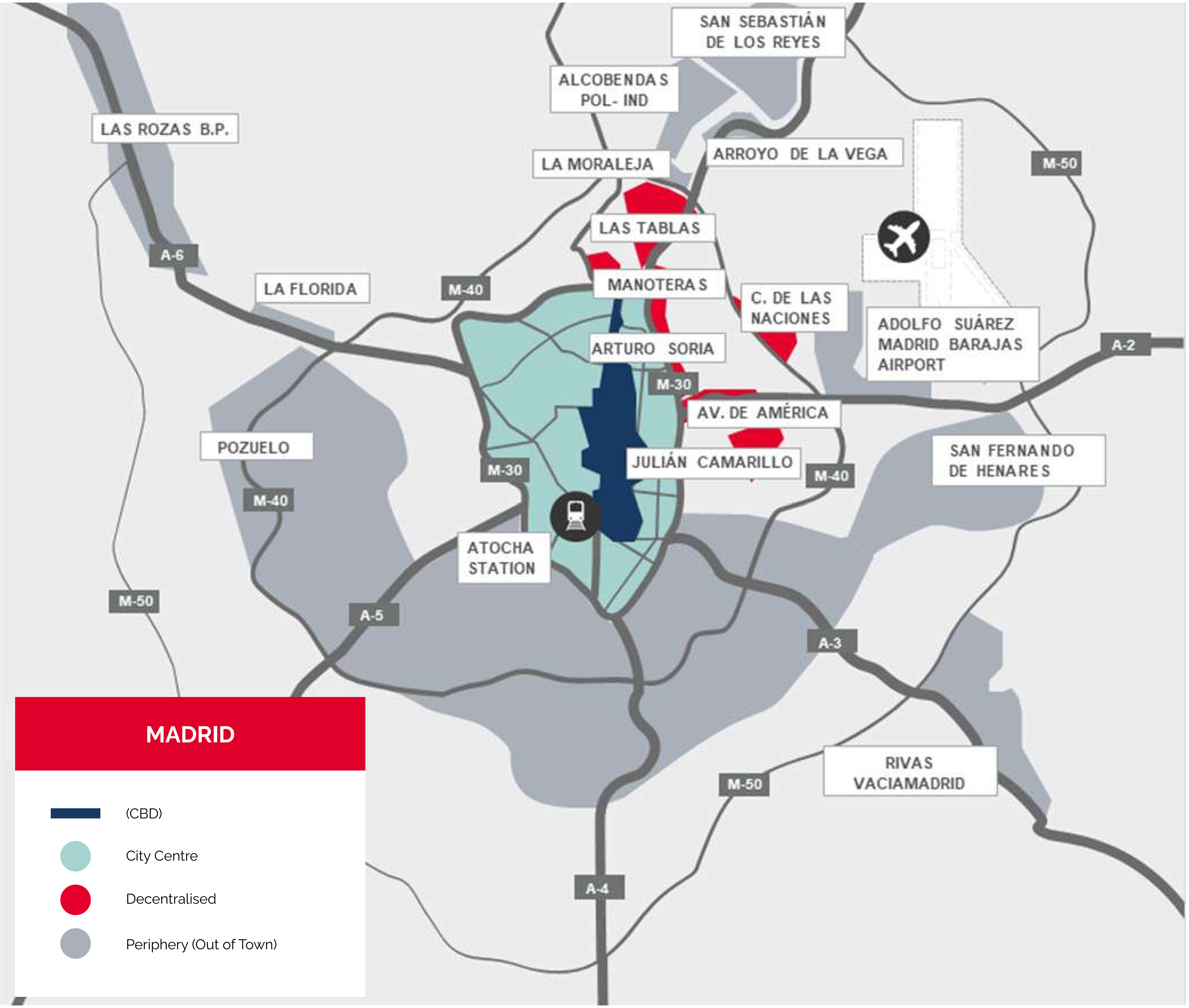
On the supply side, deliveries of new or refurbished buildings with no committed end user continue to drive the vacancy rate up, now at around 8.4%. Some 295,000 sq m were delivered during 2022, of which more than 60% was already pre-let.

The New Business Areas (primarily 22@) and the City Centre are the most noteworthy in terms of the delivery of comprehensive refurbishments.

For the year as a whole, it is important to point out the delivery of Yellow Park - Mile 22@ Business Campus, contributing more than 31,000 sq m of new grade A office floorspace in the 22@ district. The park was delivered pre-let. In spite of the delay in the deliveries of the projects due to current circumstances, Barcelona anticipates the delivery of around 220,000 sq m of offices prior to December 2023, of which 15% already has a committed occupier.

The benchmark prime rent at the end of 2022 has risen slightly, climbing to €27.50/sq m/month. Average closing rents stood at around €16.90/sq m/month, some 3% above that recorded for the same period the preceding year.

It is expected that rents will fall slightly during the opening months of 2023 due to the delivery of new offerings, though performance will vary according to each sub-market with 22@ taking the greatest impact.




## 4.1.2 Madrid

Office take up in 2022 reached 519,500 sqm in the Madrid market, which represents an increase of 33% compared with 2021. This figure has been largely driven by five deals above 10,000 sqm with a total volume of 70,000 sqm. In 2021, only two transactions of this magnitude were registered, and the sum was 31,000 sqm. Additionally, in 2022, 30,000 sqm have been absorbed by the education sector.

The distribution of space take-up inside and outside the M-30 has been similar, with 50% in CBD and City Center and 50% in Decentralized and Periphery.

Companies continue to focus on quality buildings: grade A and B+ buildings represent 70% of the total 2022 absorption.

Regarding the number of contracts, 412 have been signed in 2022 which is already in line with pre covid levels.

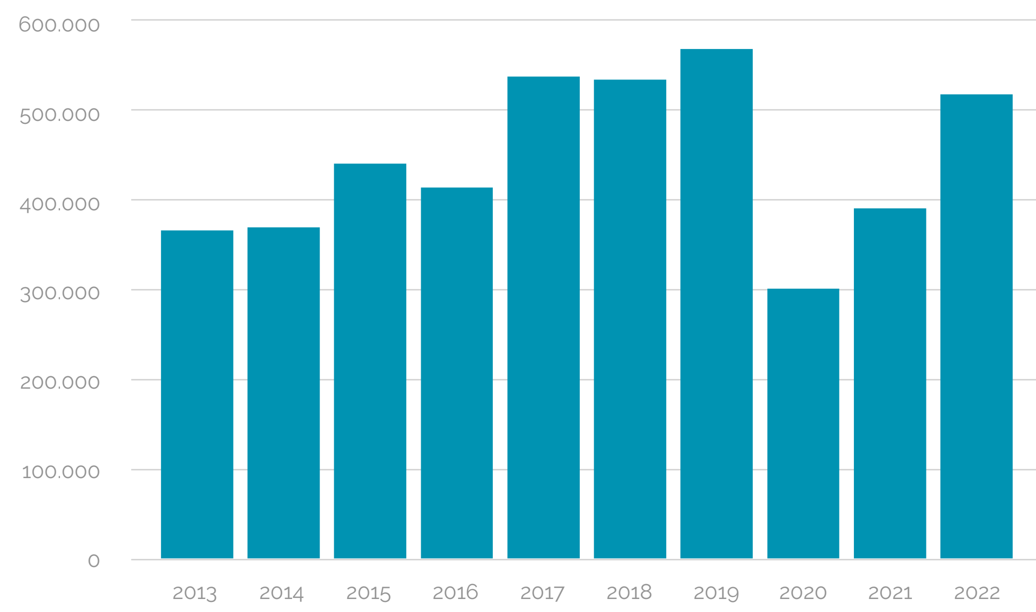
Construction activity remains robust and around 312,000 sqm are expected to be delivered in 2023, of which close to 30% are already pre let, committed by an occupier.

The vacancy rate, has fallen from 10.3% at the end of September to 9.9% at the end of December 2022.

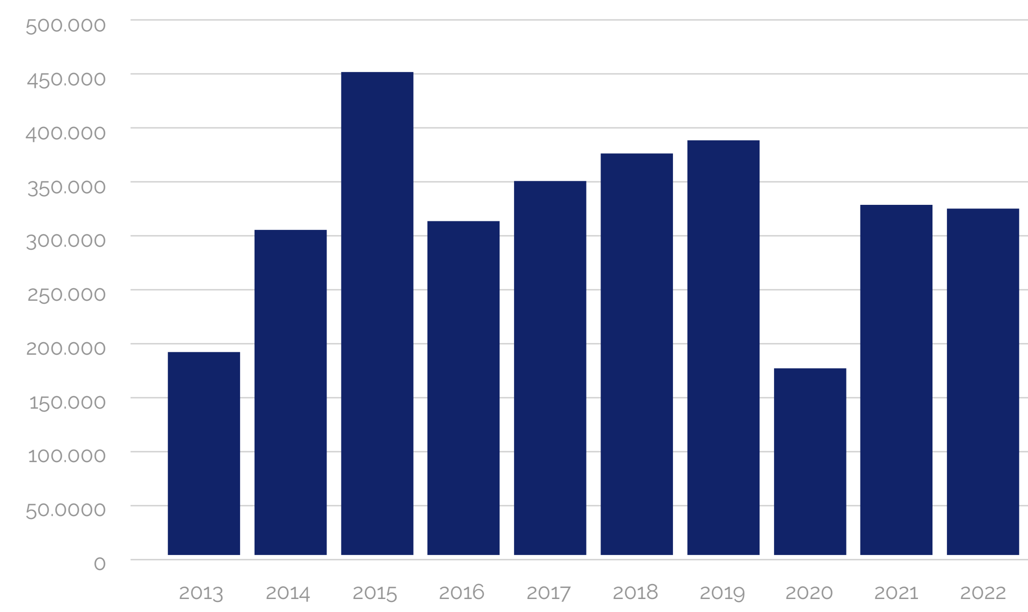
During the fourth quarter of 2022, Prime rents have shown a slight upward trend, reaching €37.00/sqm/month, exceeding the pre-Covid level at the end of 2019 (€35.50/sqm/month).

The clear preference of companies for locating in high quality buildings together with the low availability of this type of space are the main catalysts of this upward trend in prime rents.

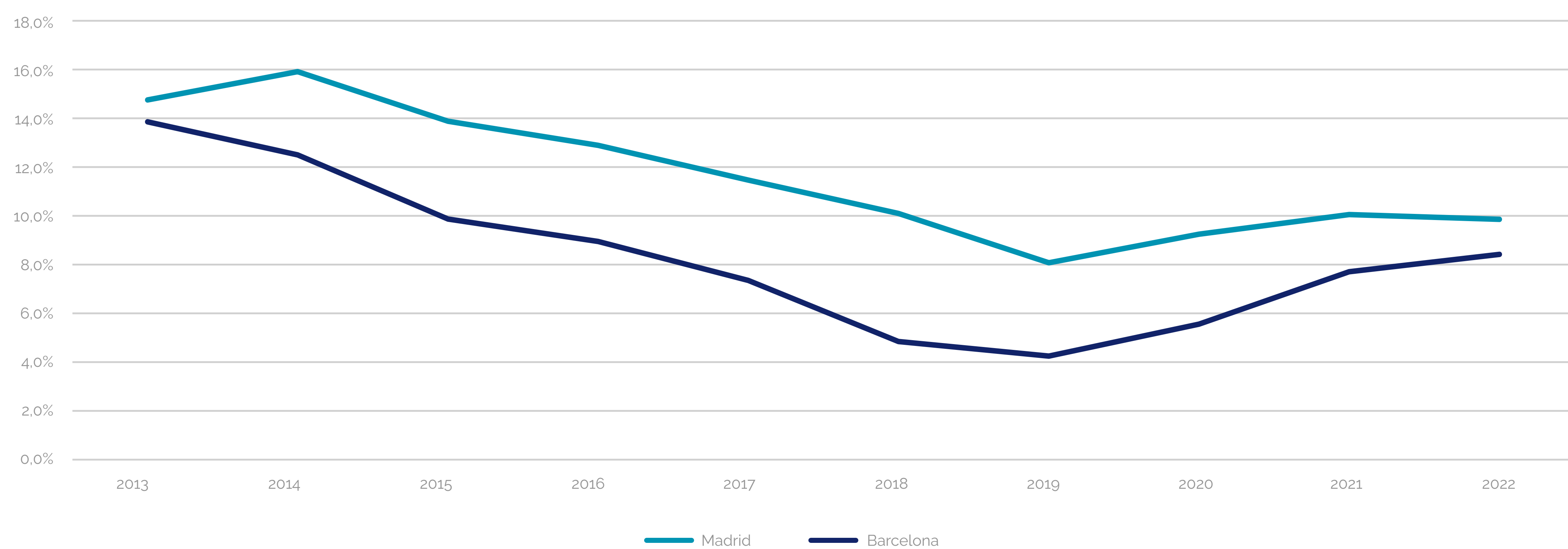
## // Space Take-Up Evolution Madrid




## // Space Take-Up Evolution Barcelona




## // Vacancy Rate Evolution



# 4.2 Retail

## 4.2.1 Shopping Centres

The stock of floor area classified as Shopping Centre amounts to 11.5 million square metres nationally, divided up into 410 assets (each with a GLA exceeding 5,000 sq m).

Overall density at a national level amounts to 242 sq m per 1,000 inhabitants, far below the figures for other countries such as the UK (261 sq m) and France (299 sq m). The density figure for Western Europe stands at 260 sq m per 1,000 inhabitants. This means that the Spanish market still has considerable room for growth in terms of Shopping Centre floor area.

Our estimation of market rents for prime shopping centre – prime locations & standard size units, is 72 €/sq.m/month with secondary towns but dominant prime centre rents at around 38€/sq.m/month.

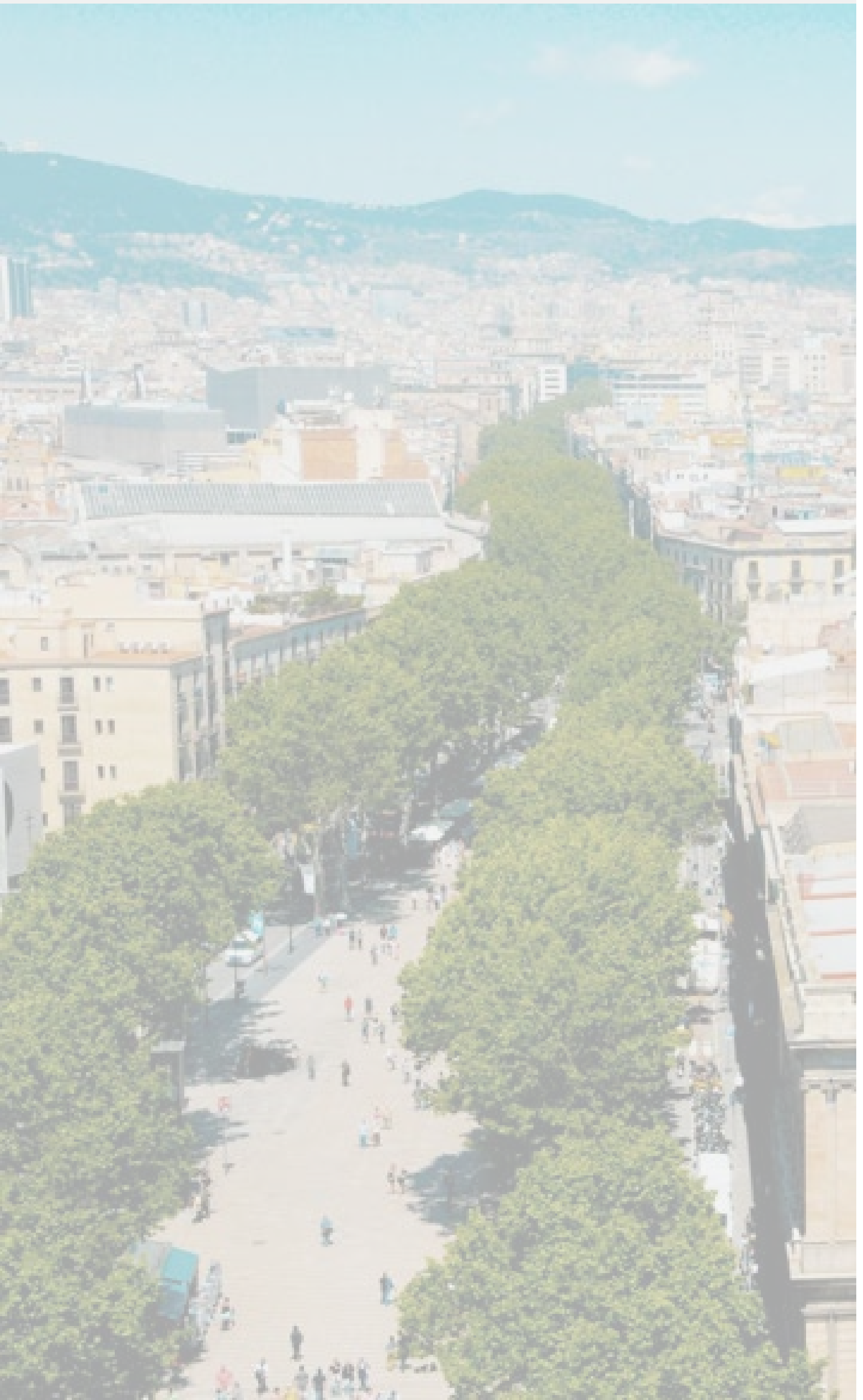
## 4.2.2 Retail Parks

Spain has 114 Retail Parks with surfaces greater than 10,000 sqm (this being the area from which the parks begin to have integrated management) and accumulate around 3.2 million square meters of GLA. The area of Retail Parks will increase by 200,000 sqm during 2023 through 8 new openings throughout the Spanish territory.

Despite the pandemic, all developments have gone ahead. During 2020 and 2021, 9 retail parks were inaugurated, adding around 260,000 m$^2$ of new quality space.

Prime rental values stand at 19.0 €/sq.m/month in Madrid and at 16.25 €/sq.m/month.

# 4.2.3 Retail High Street



Barcelona and Madrid are understandably the two most important retail high street pitches in Spain.

2022 ended with high activity in terms of leasing contracts in stores located in the prime and superprime areas of the main shopping streets of Madrid and Barcelona.

The quarterly average has been 28 operations during 2022, which places it above the quarterly average of 2019 (21 operations).

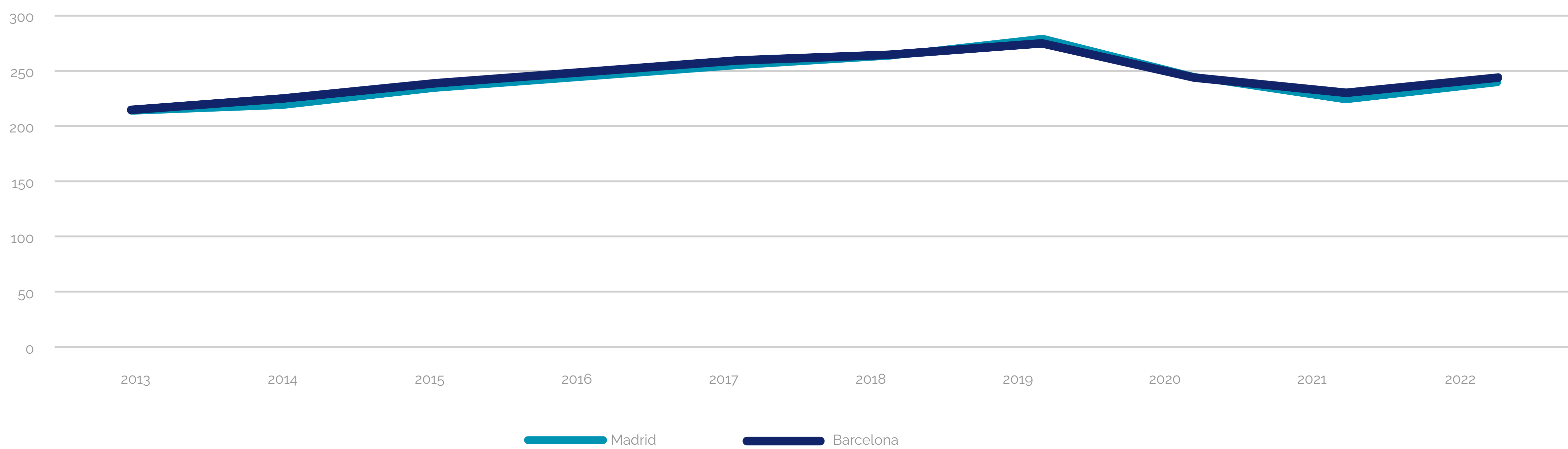
By commercial area, 42,180 sq. m have been absorbed in 2022, which represents an increase of 29% compared to 2019, the pre-Covid19 period.

At the end of 2022, the vacancy rate of commercial surface was 5.5% for high streets unit located in the Prime and SuperPrime of Madrid.

The fast return to normality has activated the return of foreign tourists. Spain has experienced a very dynamic tourist season, recovering the 90% of foreign tourists during July and August 2022, compared to the same months of 2019.

Considering high street market in the city of Barcelona, Prime and SuperPrime areas have shown a decrease in the vacancy rate by surface from 7.0% in June to 5.9% at the end of December 2022.

## // High-Street Prime Rent Evolution (€/Sq.m/Month)



# 4.3 Logistics

The absorption of logistics space in the Madrid market and its area of influence reached 1,444,400 sqm during 2022. This represents an increase of 43% compared with the figure for 2021.

Almost all the occupier demand is driven by the expansion needs of logistics operators who increasingly need more space due to the increase in their business volumes.

The current vacancy rate (6.9%) has decreased from 9.2%, registered at the end of 2021.

On the other hand, construction activity continues to be very dynamic and for 2023 almost 1,113,000 sq m is expected to be delivered, 22% of which is already is already pre let or has a committed occupier.

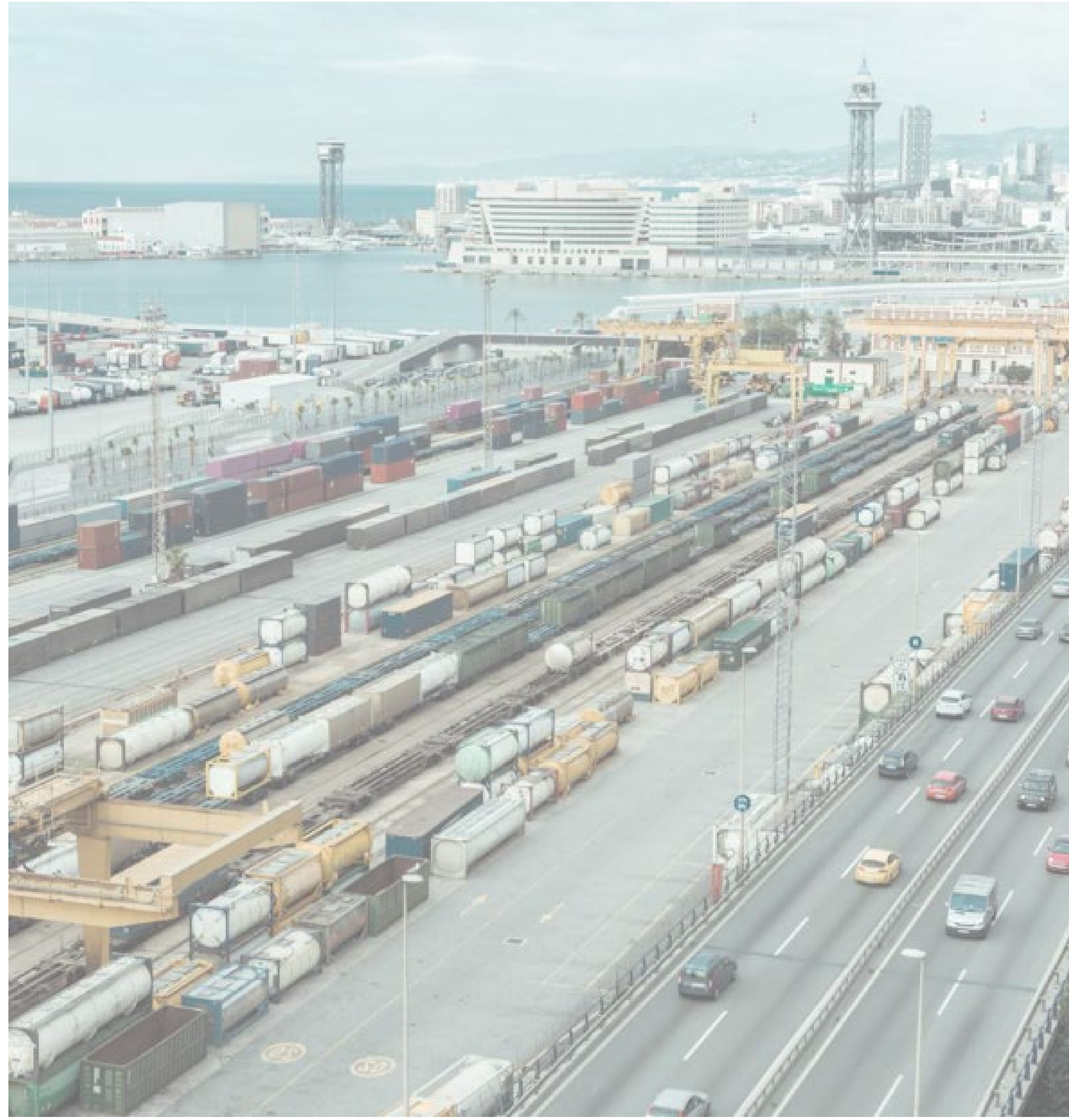
As a general trend, the average and prime rents in the Madrid logistics market increased slightly during 2022. By submarkets, depending on the level of demand and the available and future supply, a different behavior of rents is observed, with more evident current and expected increases.

Take-up of logistics floorspace in the Barcelona market during 2022 reached close to 841,000 sq m, as a result of 65 deals. This represents an increase of 21% in comparison with 2021.

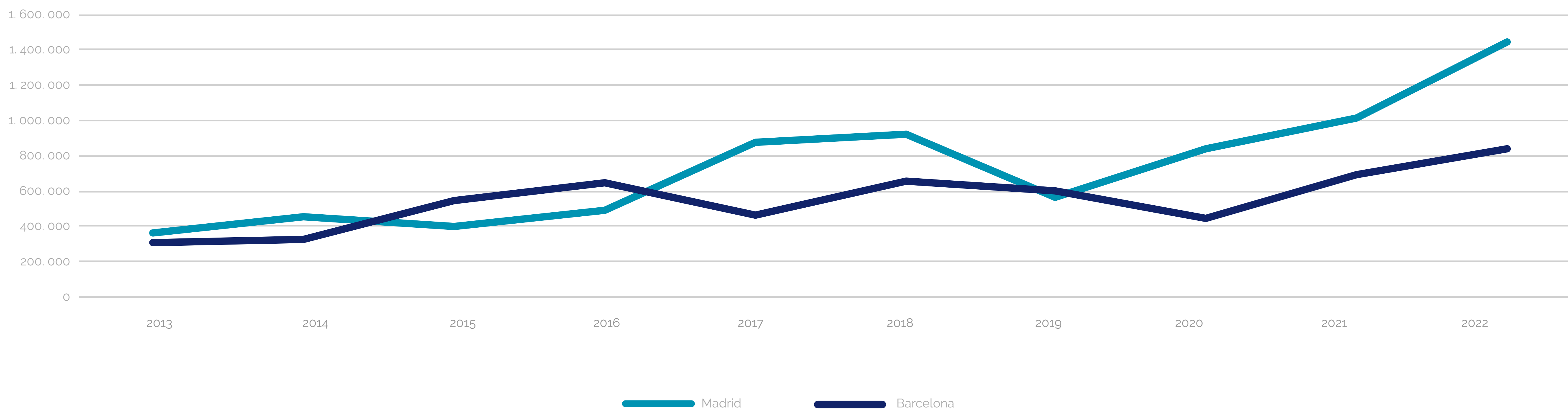
The vacancy rate continued to fall gradually, from 3.3% at the end of September to 2.8% at the close of year. Construction activity meanwhile remains energetic and, prior to the close of 2023, it is anticipated that around 640,000 sq m will be delivered to the market, some 48% of which already has committed occupiers.

Limited available supply means that occupiers have ever shrinking bargaining power just as the need for logistics floorspace is growing. As a consequence, the Prime logistics rent in Barcelona at the close of 2022 stood at €7.75/sqm/month, levels achieved in the ZAL/Port area of the city.

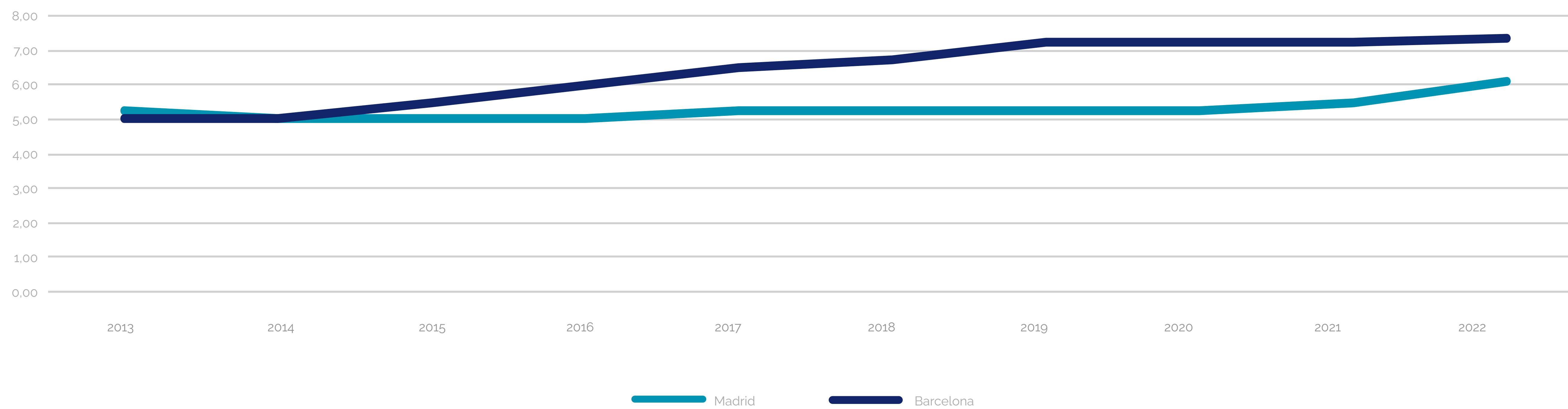
As a general trend, average rents in Barcelona's logistics market are being subjected to upward pressures.



## // Logistics Take-Up Evolution (Sq.m)




## // Logistics Prime Rent Evolution (€/Sq.m/Month)



# 4.4 Tourism

Tourism in Spain is a key sector for the economy, and the latest figures reveal a buoyant industry. Tourism ended 2022's summer season in great shape with international tourist arrivals coming very close to the records set in 2019, a year that was extremely positive for the industry. Domestic tourism continued to post very good figures. However, the macroeconomic scenario represents a risk for the trend in tourism activity over the coming quarters due to high inflation and the economic slowdown in Europe. Nevertheless, tourism demand still enjoys significant levers for growth this year and therefore a complete recovery of the sector is expected in 2023.

The situation in the tourism sector was dramatically altered. After an extremely difficult 2020 and 2021, 2022 confirmed that the sector continues to be a driver of growth for the Spanish economy.

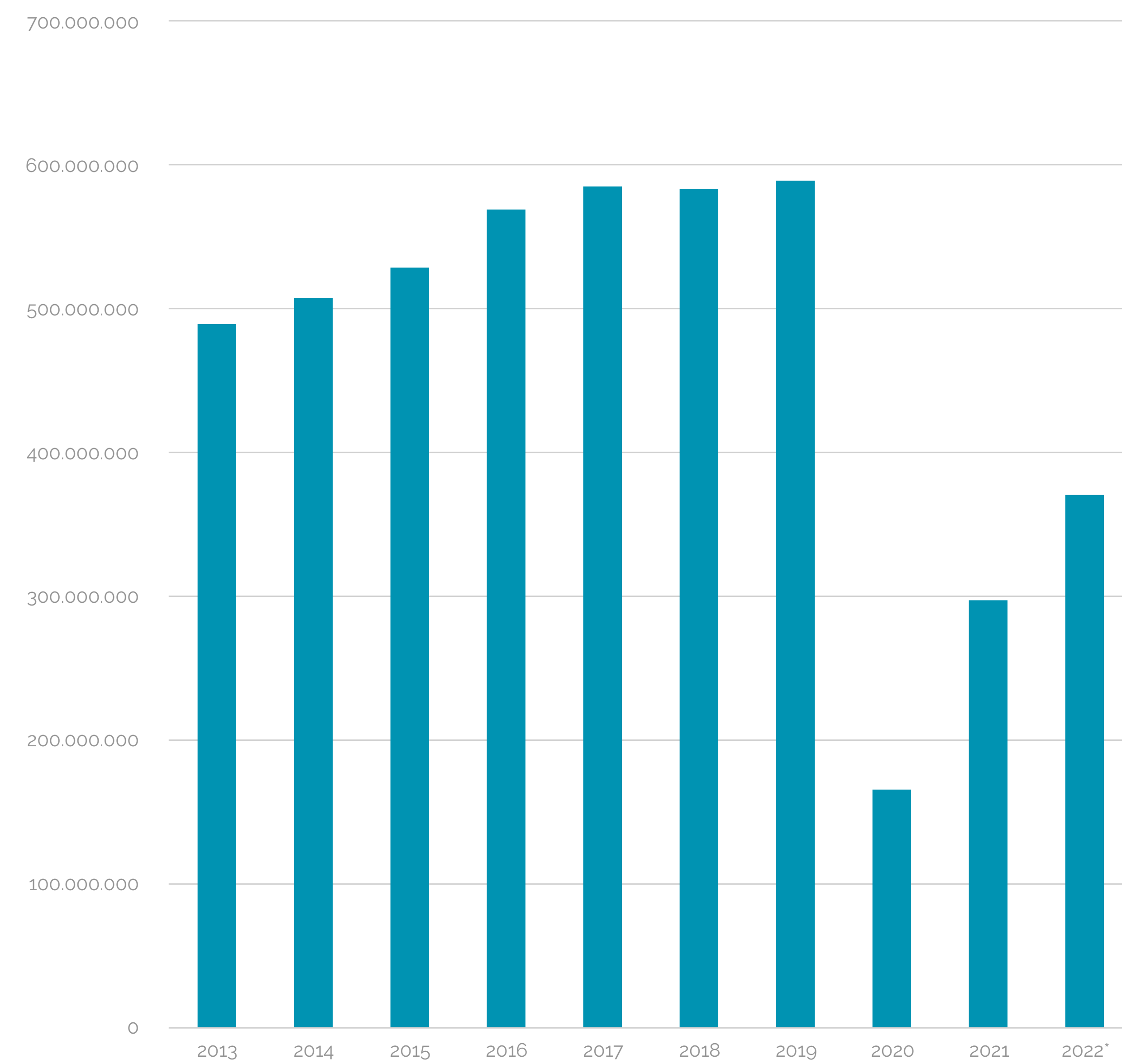
According to official indicators published by Spain's National Statistics Institute (INE) summer 2022's tourist demand was very close to the figure recorded in the same period of 2019. Total overnight stays in hotel and non-hotel accommodation during the months of July, August and September were just 1.3% below those of summer 2019.

The excellent dynamic domestic tourism recorded overnight stays 6.6% higher than in 2019. Due to an increase of trips abroad in 2022, domestic tourism was slightly down on 2021 figures but this was compensated by the recovery in international travel. International tourism performed much better than in 2021, reaching a level of overnight stays just 5.9% lower than in 2019.

The consequences of the pandemic have been palpable in the hospitality sector over the past two years, this being one of the sectors hardest hit by the social distancing measures imposed to control the spread of COVID-19. Data from 2022 already suggest a paradigm shift is occurring for the sector, which seems to have embarked on a decidedly positive trend.

The turnover indicator produced by Spain's National Statistics Institute, for 2022 up to August, points to the food and beverage services sector (CNAE 56) being just 4.1% below its level in the same period in 2019, a considerable improvement on the 27% reduction posted in 2021.

## // Overnight Stays Evolution - Spain




*2022 available data according to INE

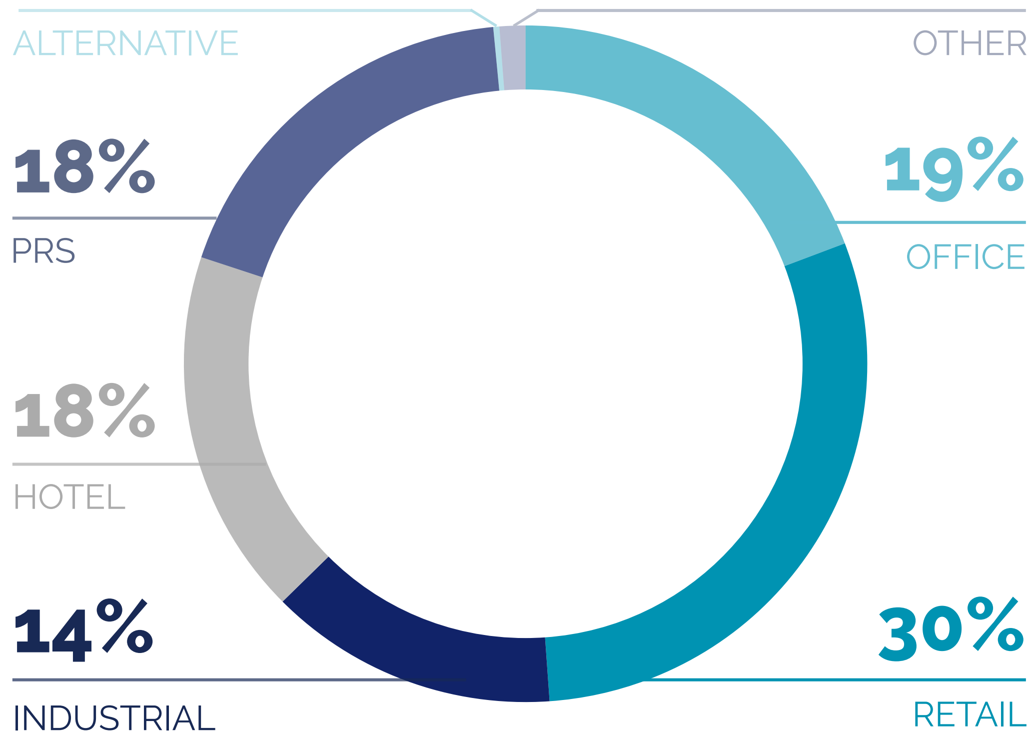
# 4.5 Investment

2022 closed with an aggregate figure of €13.2 billion in terms of investment deals in Spain, some 10% above the figure recorded the preceding year. Activity was primarily led by the retail (32%) and offices (20%) sectors, followed by residential (19%) and hotels (18%). The investor profile is in line with that which dominated the market prior to Covid-19: overseas buyers continue to account for for the majority of investment, although domestic investment has grown in importance over the past year. In terms of cities, Barcelona saw total investment of 3 billion Euro in 2022 and Madrid closed the year with total real estate investment of 3.3 billion Euro, representing changes of 24% and -35% on the 2021 figure in Madrid and Barcelona respectively.

The high volumes are in keeping with a number of major deals recorded throughout the year, such as the portfolio acquired by BBVA from Merlin for €2 billion in the retail segment and, in the office segment, the €239m acquisition of CaixaBank's head office (18,700 $m^2$ sq m) at no.51 on Madrid's Paseo de la Castellana by Inmo Criteria (InmoCaixa). In Barcelona it is important to highlight transactions such as Frey's acquisition of Finestrelles Shopping Centre from Equilis for €128m, encompassing retail floorspace of 39,250 sq m.

In the office segment, occupier demand is focused on attracting and retaining talent, adjusting to the hybrid working model and opting for high-spec buildings with flexible spaces and amenities and which address factors such as sustainability and well-being. Investment continues to be concentrated within the M-30 ring road in Madrid and, in Barcelona, within 22@ and City Centre. Barcelona and Madrid closed the year with an investment volume of 1.2 billion Euro in

## // Breakdown By Asset (2022)

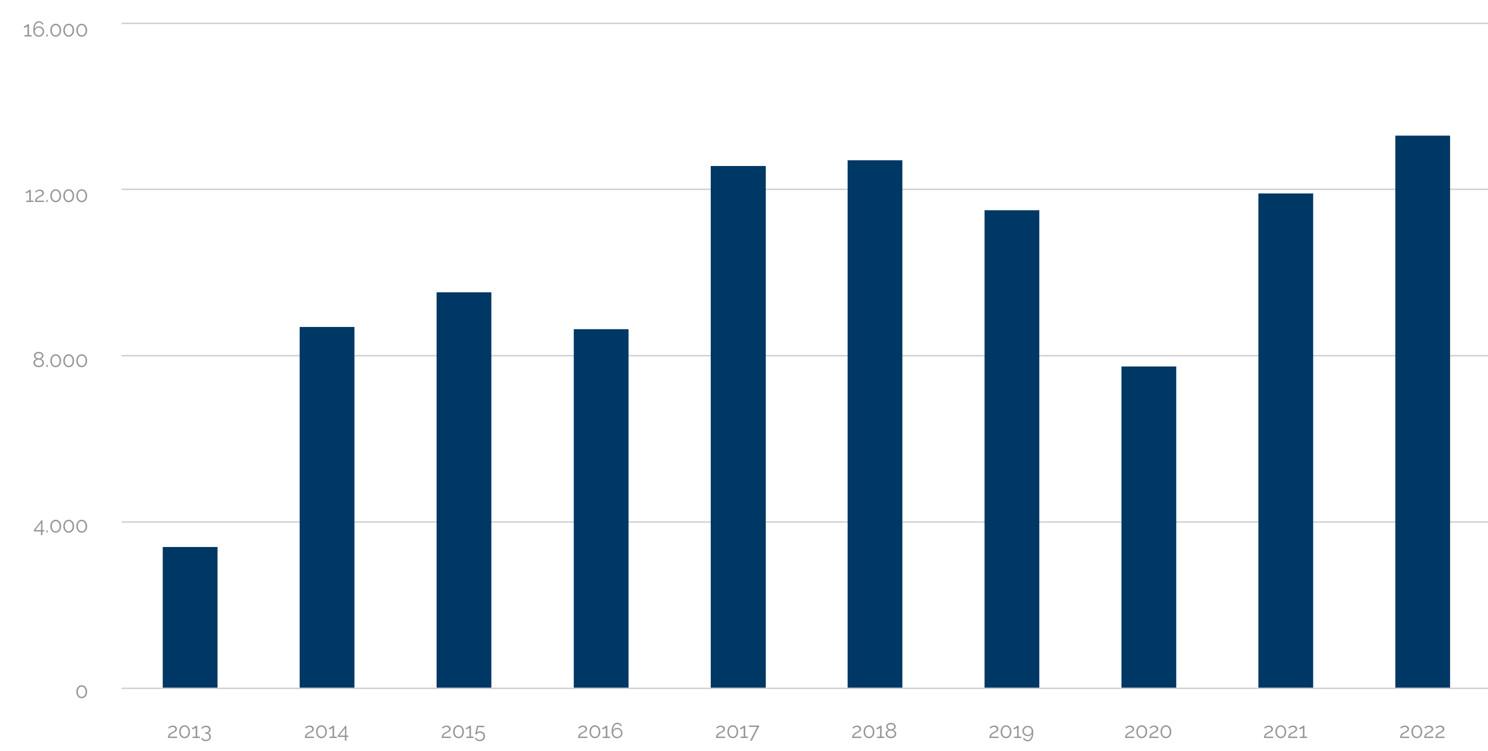


each market. This represents a fall of 47% in comparison with 2021's figures recorded in Barcelona and an increase of 82% in Madrid, which closed 2021 with an office investment volume of only €700m. Whereas the first half of the year in Madrid and Barcelona demonstrated that investor appetite remained strong, the second half, despite continued interest, saw the failure of a number of deals to close, due to the degree of volatility in the financial markets.

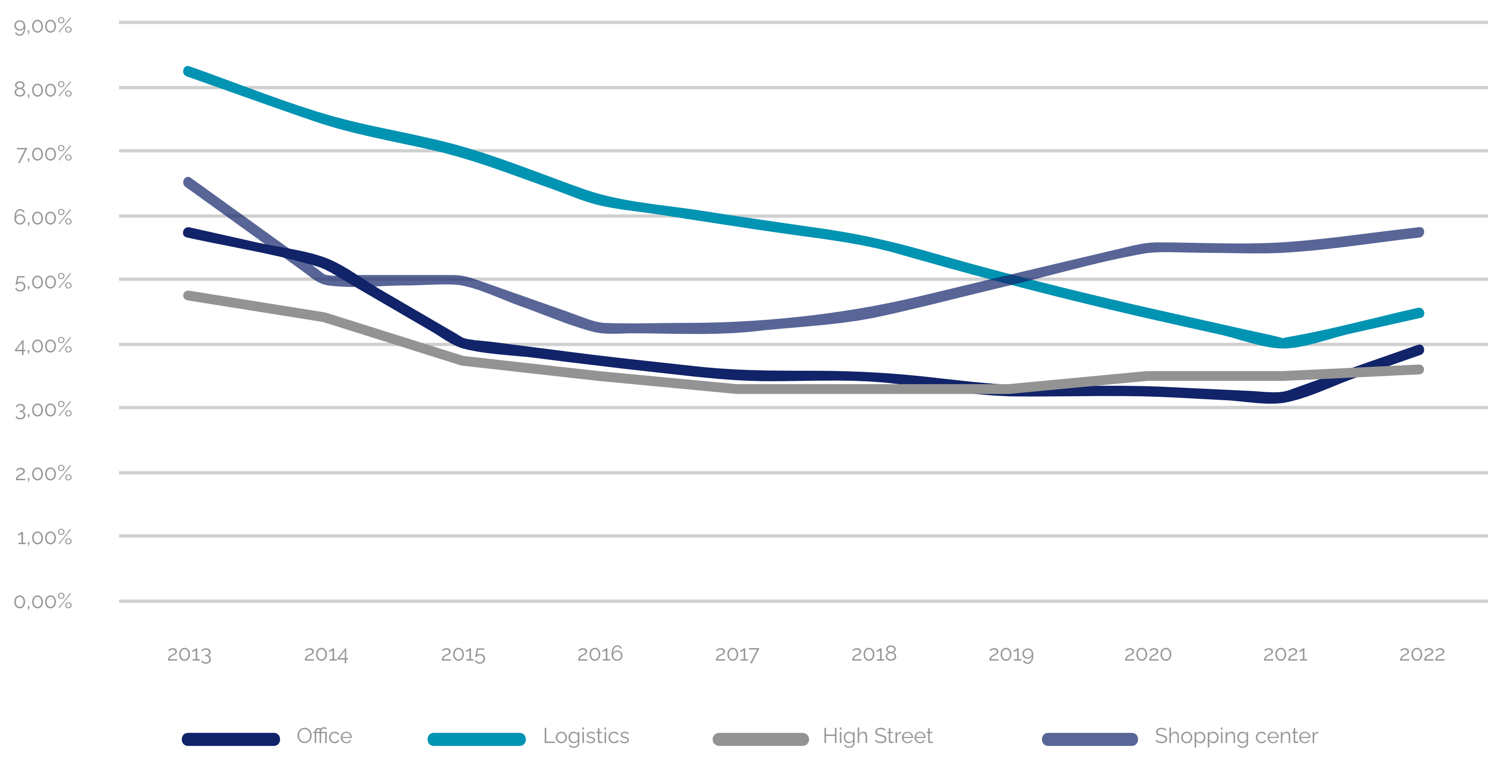
Investment activity in retail has come back to life in comparison with 2021. A number of significant deals regarding shopping centres were struck, including Torrecárdenas (Almería), Finestrelles (Esplugues de Llobregat), Ribera del Xúquer (Carcaixent) and La Rosaleda (Malaga). Residential product is another of the main focal points for investors, particularly with respect to student halls of residence and the Private Rented Sector (PRS).

Investment data at the close of 2022 highlights a dynamic market thanks to high levels of liquidity in the capital markets, primarily due to deals struck during the first half of the year. The current volatility in financial markets and the rise in interest rates have led to a degree of caution on the part of investors as noted in the slowdown during the closing quarter of the year. The close of year reflects price volatility and, in the specific case of offices, prime office yields stood at 3.90% and 4.00% for Madrid and Barcelona respectively. In 2023 it is expected that yields will stabilise as a result of inflation being brought under control and as a consequence of stabilising interest rates.

## // Total investment volume in spain (m€)




## // Prime Yields in Spain




# 4.6 Market practices

## // General

| | |
|---|---|
| **Duration of Lease** | A non-standard document is drawn up and signed by both the tenant and the landlord. Prior to this the landlord requires, as a proof of real interest from the tenant, a non-binding offer letter that contains the basic lease terms (initial rent, rent free period, lease length, service charges, parking, etc). The landlord is not required to sign this document but it is the first stage before commencing negotiations. |
| **Enforceability of Lease** | Leases are legally binding document. |
| **Restrictive user clauses** | None of note. |
| **Broker's Fees** | Tenant:<br><br>Agents fee at 15% of annual rent on High Street. If a premium is involved, then a 5% of a total premium is added, plus 10% of annual rent.<br><br>Landlord: Shopping Centers: 15% new contract (Compulsory annual)<br><br>Landlord:<br><br>Agents fee ranges from a month's rent equivalent to 12%-15% of the annual rent for Office and Industrial. Agents fee at 15% of the annual rent on High Street. |

## // Lease terms

| | | | |
|---|---|---|---|
| **Duration of lease** | **Office**<br>3-5 years | **Industrial**<br>3-5 years | **Retail**<br>Shopping centres:<br>5-10 years.<br><br>High Street: 10-15 years. |
| **Break options** | **Offices:**<br><br>No restriction on Office agreements.<br><br>A tenant will not usually have to commit to more than 5 years. | **Logistics:**<br><br>Break option at the end of the $3^{rd}$ year. | **Shopping centres:**<br><br>In long term leases of more than 5 years usually there is a break option at year 5 (by tenant side 6 months notice).<br><br>High Street:<br><br>3 years are usually<br><br>Compulsory (both parties). Break options at the 5th or 10th year with 6 months notice (compulsory on the tenant side). |

## // Rental Payments

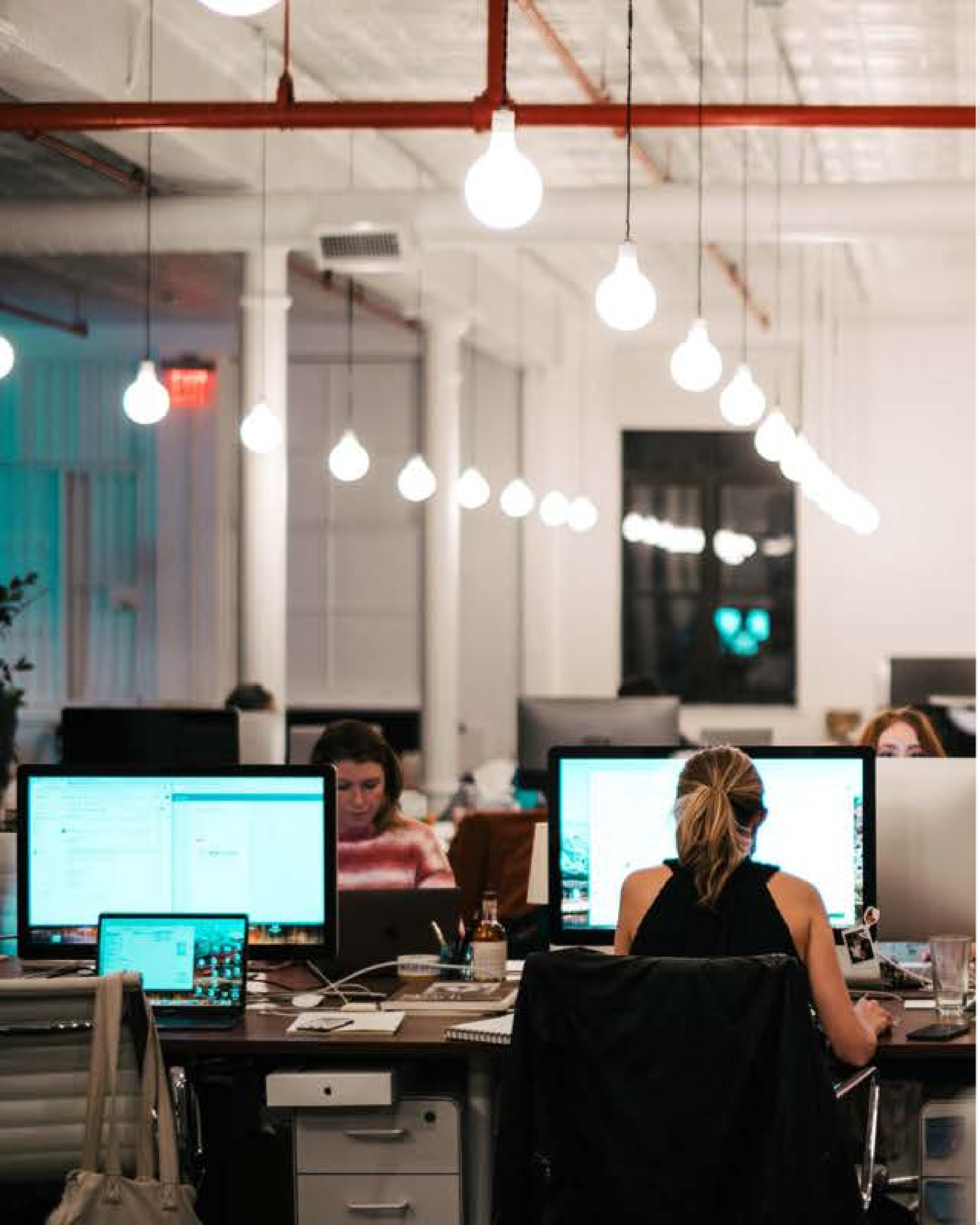
| | |
|---|---|
| **Rent payment and frequency** | Euro per sq.m per month, due monthly in advance. It is typical for high street retail units that the rent is quoted on as an overall monthly rent, rather than a price per sq.m. |
| **Rent Deposit** | A security deposit of 2 months rent is required by law. An additional bank guarantee is often required (6 months rent + service charge + VAT). |
| **Indexation** | Standard practice in annually according to CPI but indexation can be agreed between both parties (fixed, stepped, CPI,+1). |
| **Security of tenure** | None, but the parties do not have any restriction on agreements for further terms. |
| **Turnover Rents** | Typical in Shopping Centres, at 6%-8% of turnover. A base rent is charged and the tenant will pay a higher rent if the turnover rent exceeds that amount |
| **Tenant Liability** | None, but tenants often purchase public liability insurance. The tenant is responsible for reinstating the premises with the exception of wear and tear. |

## // Service Charges, Repairs & Insurance

| | | |
|---|---|---|
| **Repairs** | Tenant: Internal repairs and maintenance. | Landlord: External repairs and maintenance. |
| **Insurance** | Tenant: Contents insurance. | Landlord: Building insurance. |
| **Service charges** | Usually, calculated on a separate basis from the monthly rent. | |
| **Utilities included in service charge** | Yes, to include: property tax (IBI), common, areas maintenance, 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. |




# Tax & Legal **Portugal**

5

# 5.1 Forms of Property Investment

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

## 5.1.1 Assets deals

### Ownership in Portugal

The concept of "full ownership" in Portugal mirrors the French *propriété*, the British "freehold" and the German *voll Eigentum* and is based on the full and exclusive right of use, fruition and disposal of a property.

Other legal property rights include surface rights (*direito de superfície*), which comprises the right to build or maintain a construction on land that is partially 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 recognise fiduciary ownership (except in the Madeira Free Trade Zone and, exclusively for foreign trusts operating off-shore activities and excluding property located in Portuguese territory).

Co-ownership of property is allowed under Portuguese law. Also of note is the possibility of incorporating a building (or several buildings) functionally interconnected under "horizontal property" (*propriedade horizontal*) regulations.

## Formalities to transfer property

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

In particular, the 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).

Apart from these obligations, pursuant to the legal framework governing ultimate beneficial owners (set out in Law 89/2017 of 21 August as amended by Law 58/2020 of 31 August), entities that do not comply with the framework are not allowed to intervene as a party in any real estate transactions related to a transfer of ownership by any means or the constitution, acquisition or disposal of any other in rem rights or guarantee rights (direitos reais de gozo ou de garantia) over any property. Notaries, registrars, registry officers and lawyers must communicate, cooperate, examine and refrain from performing any acts with entities that do not comply with the obligations under this framework.

Additionally, in order to combat terrorism and money laundering, the Portuguese Land Registry Code and Portuguese Notaries' Code require that the document formalising the sale and purchase of a property indicates the time of the payment and the method(s) used for such payment.

## 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, regulations currently in force require that any facts determining the creation, recognition, purchase of – or changes in connection with – *in rem* rights over property be filed with the land registry.

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

With the exception of special legally enumerated cases (e.g. provisional records of purchase that retain priority after their conversion into a definitive record 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 other incompatible rights of third parties – even if those rights were established prior to registration date – if 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.

In such circumstances, it is standard market practice for purchasers to commission a due diligence exercise in connection with all mentioned areas. If the parties require an immediately binding document, a promissory contract is usually signed for the sale of the specific property.

## 5.1.2 Share deals

### Share deals

Property can also be acquired through an equity stake in an investment vehicle that owns the property.

The most common property investment vehicles are commercial companies, specifically public limited companies (*sociedades anónimas* or "S.A.") and limited liability companies by quotas (*sociedades por quotas* or "Lda"), with — the common denominator between both types of company being the fact that they are limited liability companies—; also used, are undertakings for collective investment that are either of a contractual nature (property investment funds); or of a corporate nature (property investment companies).

### Formalities

Except for limited liability companies by quotas, in which the transfer of equity investments (quotas) must be set out in writing and filed with the relevant commercial registry, the transfer of equity investments in public limited companies or undertakings for collective investment (shares or participation units) is not subject to any specific formal requirement.

The formalities required for the effectiveness of transfers also vary depending on the type of investment vehicle.

### Due diligence and preliminary contracts

A purchaser is also advised to commission a due diligence process to ascertain the commercial, financial, tax, corporate, legal and labour-related status (regarding former or current workers) of the investment vehicle whose equity investments the purchaser intends to acquire as well as the status of its underlying assets (property and other assets).

# 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.")

Portuguese companies usually opt for the form of public limited companies.

Their equity capital is divided into shares, with a minimum initial capital of **€50,000.**

They must initially have at least five shareholders and each share must have a minimum par value of **€0.01.**

The possibility of forming an "S.A." with a sole shareholder is legally permissible, provided 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 most commonly used type of company in Portugal. They correspond to a standard small and medium-sized company structure given the absence of requirements regarding their initial capital and 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 quota-holder

The company limited by quotas must initially have at least two quota-holders. However, these companies may be held by a sole-quota holder to the extent specific legal conditions are met.

Information on the name of the respective quota-holders and the number and the par value 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

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

FIIs are into identical investment units, which are securities without a nominal value and which afford the right to an ideal fraction of a collective/autonomous aggregation of assets. Investment units 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 – depending on whether it concerns a public or private offer pursuant to the Portuguese Securities Code) or mixed, depending on whether the number of investment units is variable, fixed or variable and fixed, respectively.

Closed-end FIIs (privately subscribed) 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 regulated management entities authorised to manage FIIs.

In acting on the account of the FII, management entities must, inter alia, select the assets (e.g. properties) that will be held in the FII's portfolio, and enter into all business arrangements, performing all acts required for the purchase and management of the FII's assets. It is therefore the fund manager who carries out the FII's activity for and on behalf of the FII.

The incorporation of fund-management companies in Portugal is a relatively complex procedure requiring approval from the Portuguese Securities Market Commission ("CMVM"), and is therefore subject to the CMVM's ongoing supervision. The activities of fund-management companies are subject to regulatory rules, in particular in light of the conflict-of-interest and duty-of-care principles, in addition to shareholders' equity requirements.

## Depositary

The securities comprising the FII's assets must be entrusted to a single depositary, which must be a credit institution. The depositary is required to have its registered office in Portugal or, if based in another Member State of the European Union, must operate through a branch 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.

## Acitvity of FIIs

**FIIs may perform the following activities relating to property:**

**(i)** purchases of property for rental or other forms of use in exchange for consideration;

**(ii)** purchases of property for resale;

**(iii)** purchases of other rights to properties with the objective of obtaining a profit; and

**(iv)** performance of building projects and property refurbishments, obtaining a profit in exchange for consideration or through a 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 for the sale of properties that are not yet owned by the FII, except for promissory sales agreements involving property coming under the aegis of construction projects.

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

## Incorporation of FIIs

**The incorporation of an FII is subject to the CMVM's consent and supervision.**

Within one year of its creation, a FII must have assets worth at least €5 million under management, unless the FII was incorporated through private subscription or all unit-holders of the FII are professional investors. Failure to meet this criterion will entitle the CMVM to revoke the FII's authorisation.

Various costs, charges and expenses (apart from those underlying the property deals themselves) **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 audits of the FII's accounts required by law.

## 5.2.3 Property investment companies

**The possibility of incorporating FIIs with a corporate form, or converting a commercial company into an FII with a corporate form, was recognised in Portuguese legislation under the concept of "property investment companies" (*sociedades de investimento imobiliário*, "SIIMO").**

### Types of SIIMOs

SIIMOs are collective investment undertakings with their own legal personality and which may take the form of "SICAVIs" (public limited companies, or S.A.s, with variable capital) or "SICAFIs" (public limited companies, or S.A.s, 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 FIIs, respectively, and

**(ii)** to the extent they are compatible with the nature and object of SIIMOs, the regulations set out in the Portuguese Companies Code and other Portuguese corporate legislation.

**Unlike FIIs, a SIIMOs' shareholders may simultaneously be investors (as shareholders) and managers of a SIIMO (selfmanagement).**

A SIIMO must have a minimum initial share capital of **€125,000**, divided into identical nominative, book-entry shares with no nominal value.

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

As with fund managers of FIIs, SIIMOs must ensure that the total net value of its assets does not fall below €5 million 12 months after incorporation, unless the SIIMO was incorporated through private subscription or all shareholders of the SIIMO are professional investors.

### Management of SIIMOs

Unlike FIIs, a SIIMOs' shareholders may simultaneously be investors (as shareholders) and managers of a SIIMO (self-management) or, alternatively, appoint a property-investment-fund manager to perform that task (external management).

SIIMOs' activities are subject to the CMVM's supervision (already applicable to FII managers in their role as management entities).

### Incorporation of SIIMOs

Lastly, it is important to take into consideration that the rules governing the incorporation of FIIs 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 they do not conflict with FII regulations and the nature and object of a SIIMO.

**The shares representing the entire share capital of a SIGI must be listed on a regulated market or a multilateral trading facility.**

## 5.2.4 Property investment and management companies (SIGI)

Introduced in 2019 as a new type of investment vehicle to promote investment opportunities in the Portuguese real estate market, and denominated in Portuguese legislation as "real-estate investment and management companies" (*sociedades de investimento e gestão imobiliária*, "SIGI"), SIGIs are considered the Portuguese equivalent to real estate investment trusts ("REITs") [if others are in quotes, perhaps this should be as well. Also, should the full name of SIGIs not be in lowercase as other corporate and business forms are not generally capitalized elsewhere in the doc?] that exist in various jurisdictions throughout Europe.

### SIGIs' legal requirements

To be classified as a SIGI, a company must be incorporated as a public limited liability company (sociedade anónima) with its registered office and administration located in Portugal, and with a:

minimum share capital of
**€5,000,000**
represented by ordinary shares.

Additionally, the shares representing the entire share capital of a SIGI must be listed on a regulated market or a multilateral trading facility operating either in Portugal or another EU/EEA Member State as of one year after the date on which the company's incorporation is registered or becomes effective.

### Activity of SIGIs

**A SIGI's corporate purpose is limited to the permitted activities enumerated in legislation, which include the acquisition of:**

**(a)** property rights, surface rights or any other equivalent rights with the intent of leasing the same, including atypical contractual forms that comprise services necessary for the use of the property;

**(b)** shares in other SIGIs or other companies with their registered address in Portugal or another EU Member State or EEA Member State (bound by tax administrative cooperation duties equivalent to those in force within the EU) – in either case being subject to the same legal requirements as those applicable to the SIGI; and

**(c)** units or shares in real estate collective investment undertakings or real estate investment funds/companies for rental housing, in either case with a dividend distribution policy similar to that of SIGIs.

**SIGIs must also at all times comply with specific legal and cumulative requirements regarding**

**(i)** minimum free float,

**(ii)** corporate governance,

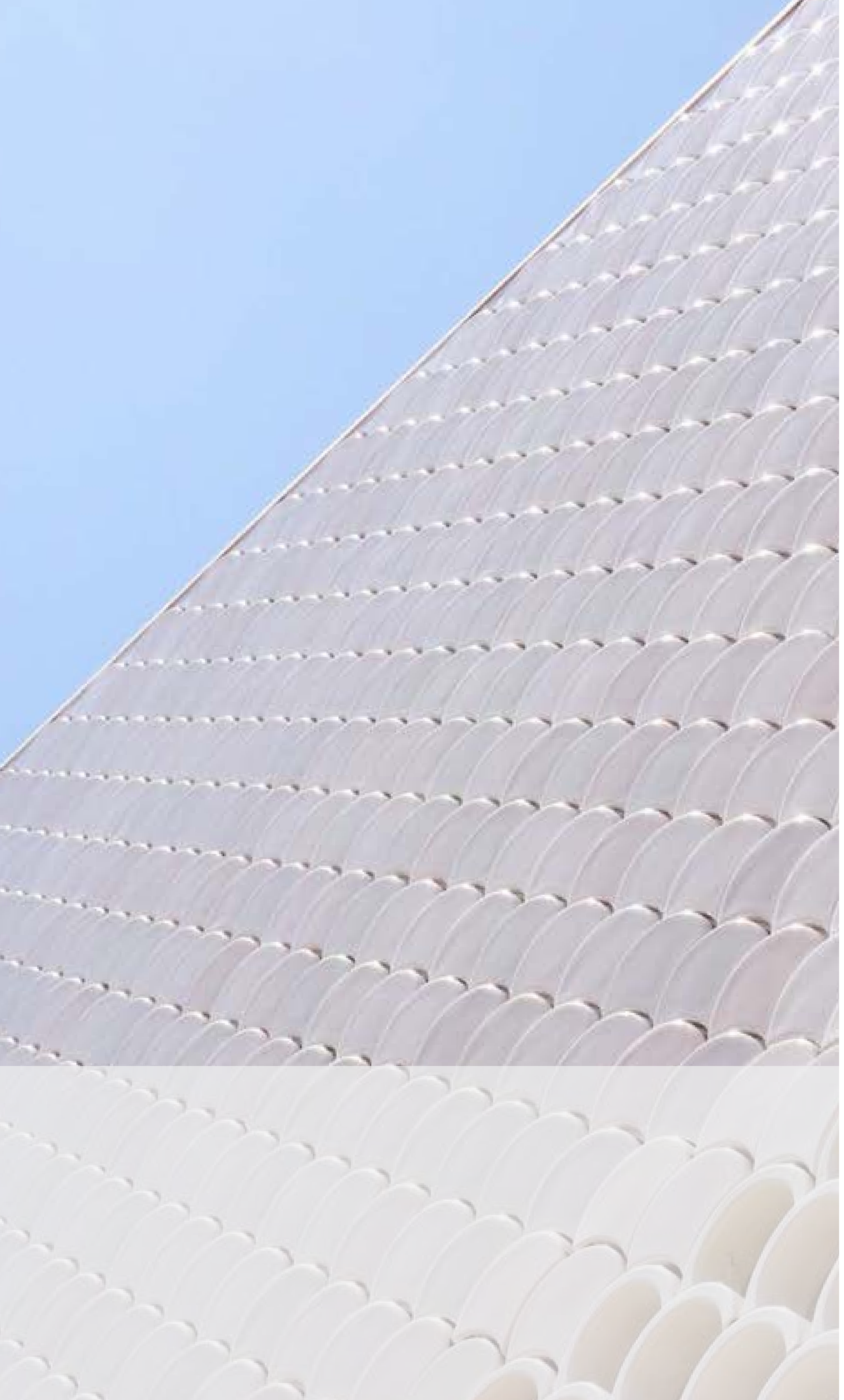
**(iii)** portfolio composition and diversification (e.g. at least 80% of the SIGI's total assets must be invested in the assets listed in (a), (b) and (c) above; and 75% of those total assets must consist of leased real estate, including atypical contractual forms that comprise services necessary for the use of the property),

**(iv)** income distribution, and

**(v)** indebtedness (limited to 60% of the SIGI's total assets).

### Incorporation of SIGIs

A SIGI may result from the conversion of an existing commercial company or SIIMO, provided that the aforementioned requirements and others established in the applicable legislation are met.



# 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. Despite not always being mandatory by law, for practical reasons, commercial loan contracts are usually set out in writing.

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

### Concept, form and legal requirements

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

Mortgages on immovable assets are formalised or amended in the form of a public deed or certified private document, which must be filed with the relevant land registry. Failure to register the instrument will mean that the mortgage is not validly created. Registration with the land registry is therefore essential for the creation of the 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 or to property posted 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. However, Portugal is a jurisdiction where creditors have full recourse to all assets of the defaulting borrower (not just the mortgaged property), unless otherwise agreed. In addition, the creditor may not directly appropriate the mortgaged property, and 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" consisting of *in rem* and personal guarantees to secure the repayment of the loan's principal and interest (both ordinary and default) pursuant to the contractual terms. Similarly to mortgages, pledged assets cannot be appropriated by the creditor (except for financial pledges and commercial pledges, as discussed below), and are instead subject to

(i) foreclosure proceedings or

(ii) a judicial sale (*venda extrajudicial*).

### Pledge agreement

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

A pledge is another type of *in rem* guarantee affording creditors preferred payment status over the creditors.

### 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 their entire shareholdings.

These contracts usually establish that, if the borrower defaults on the loan contract, the lender is immediately authorised to exercise all corporate rights in connection with the shareholdings, including the right to receive the respective dividends and participate in (and make decisions at) general shareholders' meetings.

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

A pledge agreement on shareholdings must be in the legally required form and comply with the terms and conditions set out in Portuguese law and the company's articles of association for the inter vivos transfer.

## 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 rents due under leases, bank accounts, insurance policies, construction or property development contracts. Essentially, 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 specific conditions have been met (e.g. between credit institutions and legal entities, involving cash or financial securities).

**This type of contract has the following specific features:**

**(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 upon satisfaction of the contractual obligations; and

**(ii)** if the guarantee is called in, the collateral taker is entitled to appropriate the collateral (provided that the parties: **(a)** have agreed on a suitable contractual provision for this possibility and **(b)** agree on the valuation of the financial collateral).

## Commercial pledge

On 22 June 2017, Decree-Law 75/2017 of 26 June entered into force permitting the direct appropriation of the pledged asset by the pledgee in relation to pledges granted to secure obligations assumed by corporate entities, provided that specific requirements have been met (e.g. contractually establishing the evaluation criteria of the pledged assets in the event of appropriation).

## Sureties

A third party is often requested to post a surety (usually the borrower's shareholders or, if applicable, those of the parent company of the group of which it forms part) in the lender's favour.

As 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

**Financing and guarantees granted in Portugal or herein presented for any legal purposes are, as a general rule, subject to Portuguese Stamp Tax at the following rates (levied on the amount financed or the maximum amount of each guarantee):**

| | |
|---|---|
| 0.04% | **(i)** for each month or part there of for financing or guarantees with a maturity of less than one year; |
| 0.5% | **(ii)** for financing or guarantees with a maturity of one year or more and less than five years; |
| 0.6% | **(iii)** for guarantees without any time limit and for financing or guarantees with a maturity of five years or more; and |
| 0.04% | **(iv)** on the average outstanding monthly balance of financing in the form of a current account, bank overdraft or any other form whose period of use has not been specified or cannot be ascertained. |

No Stamp Tax is due on a guarantee that is accessory to – and granted simultaneously with – a contract already subject to Stamp Tax (such as a loan contract).

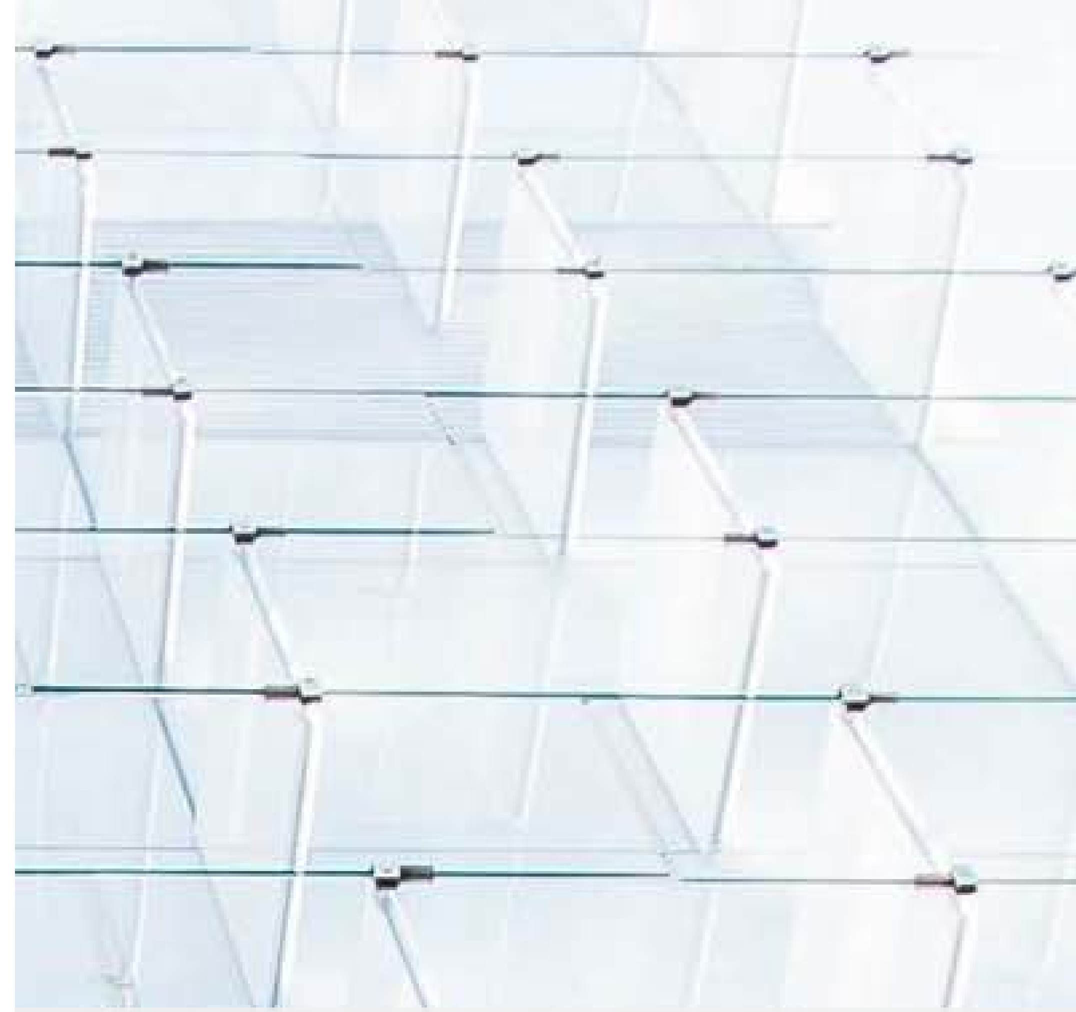
# 5.4 Urban Planning & Urban Licensing

## 5.4.1 Introduction

Real estate development projects 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 include, apart from the Constitution of the Portuguese Republic (*Constituição da República Portuguesa*) which defines the principles and tasks related to urban planning and territorial development, the Basic Law on Territorial and Urban Planning Policies (*Lei de Bases da Política e do Ordenamento do Território e do Urbanismo* - LBPOTU), the Territorial Planning Instruments Regulations (*Regime Jurídico dos Instrumentos de Gestão Territorial* - RJIGT) and the Urbanisation and Building Regulations (*Regime Jurídico da Urbanização e da Edificação* - RJUE).

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



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

## 5.4.2 Urban Planning

Urban planning in Portugal is governed by several principles, such as 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 primary 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 Portugal's main urban planning law. 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 development of a property project must therefore comply with the applicable territorial management instruments."

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

PDMs encompass the entire 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 within the perimeter of an urban PDM, 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 PPs for:**

**(i)** interventions in rural spaces,

**(ii)** urban refurbishment, and

**(iii)** 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 consistent with the applicable legal regulations and territorial management instruments.**

### Responsability of the Municipalities

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. When the project is subject to an environmental impact assessment procedure, the licensing act can only be issued and the construction works can only start after the project obtains a favourable or conditionally favourable Environmental Impact Statement through the environmental impact assessment (EIA) procedure.

Municipalities are vested with the authority to approve municipal urban planning and building regulations as well as regulations on the payment of taxes and charges levied on the performance of urban operations.

### Types of Licensing

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 enumerates the urban operations which require licensing (*licenciamento*) and advance notice (*comunicação prévia*). Other unlisted urban operations that are not exempt from "preliminary control" require advance notice (*comunicação prévia*), which is considered to be the supplementary form of "preliminary control".

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

Also of note is 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 on any legal or regulatory constraints. This exceedingly useful mechanism is widely used in the field of property transactions.

The municipality has a specific term to consider the request for advance information and its decision is binding on the corresponding entities in connection with the licensing or advance-notice decision to which it refers. The effects of the information provided remain valid for one year.

### Use permit

After the building has been completed, a property use permit must be obtained for the buildings or condominium units. The purpose of this authorisation is to verify completion of the urban project and conformity with the approved plans and licensing or advance notice conditions. The property's use permit certifies the potential uses of the building or condominium units and is essential for the property's sale.

# 5.5 Special Licensing

## 5.5.1 Commercial licensing

Decree Law 10/2015 of 16 January on the legal framework 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 installation of the following commercial retail establishments and commercial complexes are subject to an authorisation process (*autorização conjunta*) pursuant to the above legal regime:

**(i)** commercial complexes with a gross leasable area ("GLA") of 8,000 sq. m. or more and

**(ii)** commercial retail establishments not operating in commercial complexes with a GLA of 2,000 sq. m. or more.

The following commercial retail establishments and commercial complexes are also covered by commercial licensing regulations, although only a prior communication (comunicação prévia) is required:

**(i)** commercial establishments with a sales area of 2,000 sq. m. or more operating in commercial complexes;

**(ii)** commercial establishments with a sales area of less than 2,000 sq. m. that are not operating in commercial complexes and which belong to a company using one or multiple trade names or which form part of a group with an aggregate nationwide sales area of at least 30,000 sq. m.

Commercial licensing regulations encompass not only the installation of the abovementioned commercial retail establishments and commercial complexes but also any modifications involving (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 a commercial complex's location, type or GLA.

The application of the commercial licensing regulation does not exempt the developer from complying with the construction licensing regulations or any other specific legislation, such as environmental impact assessment regulations, when required.

### Authority

The DGAE (Directorate General for Economic Activities - Direcção 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 39/2008 of 7 March, as amended, known as the legal regime on the installation, exploitation and functioning of tourist undertakings (*Regime Jurídico da Instalação, Exploração e Funcionamento dos Empreendimentos Turísticos - RJET*).

### Types of tourist resorts

**The RJET defines seven types of tourist resorts:**

**(i)** hotels and aparthotels;

**(ii)** tourist villages;

**(iii)** tourist apartments;

**(iv)** tourist resort complexes;

**(v)** cultural residential tourist resorts

(manor and country houses);

**(vi)** rural tourist resorts; and

**(vii)** camping and caravan sites.

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

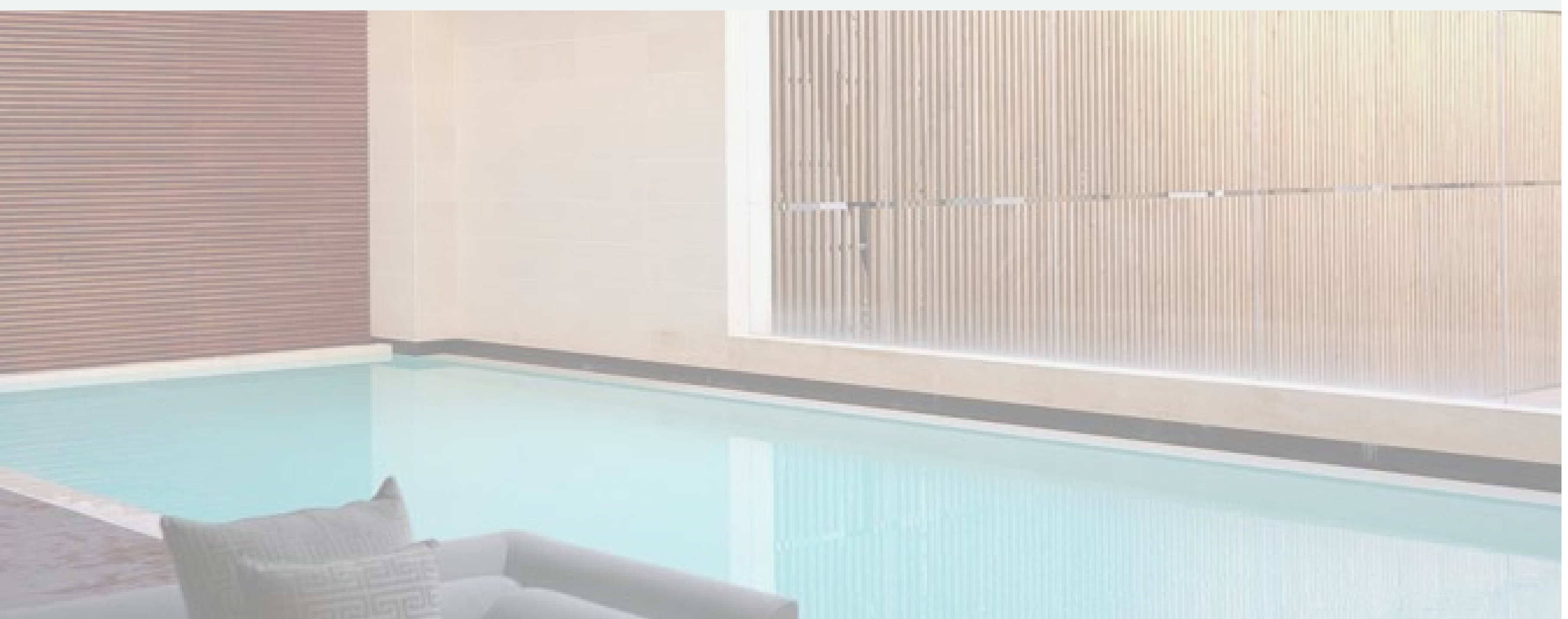
Based on the quality of services, installations and facilities provided, tourist resorts comprising hotels are graded from one to five stars, and tourist villages and apartments and rural hotels from three to five stars. These classifications are awarded on a points-based system by Turismo de Portugal, I.P. (the regulatory body for Portugal's tourism sector) and must be reassessed every four 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 corresponding 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*) must be issued pursuant to the provisions of the RJUE and RJET.



## Tourist resorts under the plural property regime

### Deed of establishment *(título constitutivo)*

Tourist resorts under a plural property regime (i.e. those 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 a building (or buildings) on a plot of land corresponds to the horizontal property or condominium deed when the horizontal property or 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 prior to the signing of any contract (or promissory contract) regarding the transfer of plots or autonomous units.

### Operation and management of tourist resorts

A touristic operation assignment agreement (*contrato de cessão de exploração turística*) is entered into upon the sale of each accommodation unit (i.e. an autonomous unit or building plot) by virtue of 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 corresponding accommodation unit pursuant to specific terms and conditions.

There is currently no time limit regarding 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). Nevertheless, the operator of the tourist resort must ensure that all mandatory services for the category of the relevant tourist resort are available and that all accommodation units are furnished, equipped and ready to be rented for tourist accommodation purposes.

### 5.5.3 Local lodging (alojamento local)

Decree Law 128/2014 of 29 August, as amended, establishes the legal framework applicable to local lodging *(alojamento local)* and temporary local accommodation offered to tourists in exchange for consideration, whenever the establishment does not meet the requirements to be deemed a tourist resort subject to the RJET.

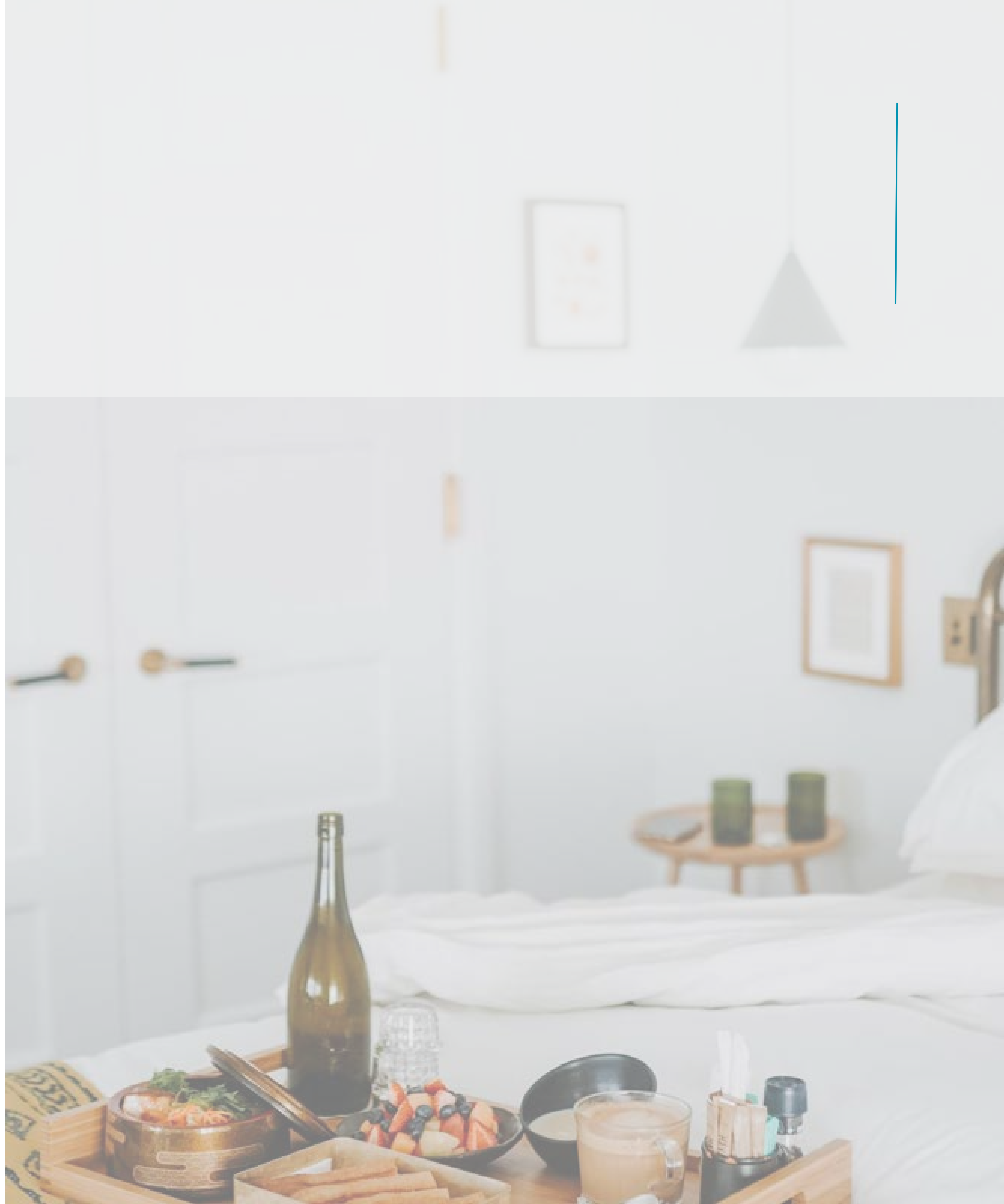
This framework applies to temporary local accommodation in apartments, houses or lodges (*estabelecimento de hospedagem*) involving accommodation units consisting of rooms, including hostels. Municipalities can approve regulations to restrict the exercise of this activity in specific areas of the city.

The exercise of this activity is subject to prior communication to (and registration with) the corresponding municipality.

Among other restrictions, local tourist accommodation is limited to nine rooms and 30 users; hostels are exempted from this restriction.

The ASAE (Food and Economic Security Authority - *Autoridade da Segurança Alimentar e Económica*) is the supervisory body responsible for ensuring the local tourist accommodation's compliance with applicable regulations.

**This framework applies to temporary local accommodation in apartments, houses or lodges (estabelecimento de hospedagem) involving accommodation units consisting of rooms, including hostels.**



# 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 6/2006 of 27 February as amended ("NRAU"), which must be applied to all contracts involving the temporary lease of a property in exchange for consideration.

**Form:**

A lease agreement must be entered into in writing and identify the parties, leased premises, purpose, rent and property's use permit certifying its compatibility with the intended purpose.

**Purpose:**

Leases entered into for a purpose that falls outside the scope of the licensed one (e.g. the property has been licensed for housing and is used for a commercial purpose) are void. If the execution of a lease agreement with no valid use license due to reasons attributable to the landlord, the landlord may be liable for the payment of a penalty equivalent to one year of rent.

**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 under any leases.

**Portuguese urban-lease regulations divide leases into two types:**

(i) leases for non-housing purposes and

(ii) leases for housing purposes.

**Leases must be entered into in writing identifying among others: the parties, leased premises, purpose, rent and property's use.**

## 5.6.2 Leases for non-housing purposes

**Freedom of contract:**

The most important aspects of lease agreements for non-housing purposes (e.g. term, rent and the respective update criteria, works and liability for the leased premises' maintenance, termination, 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 or non-fixed term, with the latter being uncommon in the property market. If fixed term, the initial duration may be freely agreed between the parties, subject to the legal maximum of 30 years and legal minimum of one year. The agreement will automatically renew for equal successive periods – or for five years if the duration is shorter – unless the parties agree otherwise.

In the first five years after the lease is entered into, regardless of the stipulated term, the landlord is not entitled to oppose the lease's renewal.

**Transfer of tenant's contractual position:**

The transfer of a tenant's contractual position requires the landlord's permission, except for specific situations established by law including, notably, the case of a transfer of a commercial or industrial business (*trespasse*) that includes 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 the lease, is mandatory and cannot be contractually eliminated by the parties or waived by the tenant in advance.

**Landlord's pre-emption right in the event 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 event of a business transfer (including the lease right) by the tenant or if 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 (or give the property as payment in kind), the tenant occupying the property for more than two years is afforded a pre-emption right over the property in respect of the sale (or payment in kind). This pre-emption right is mandatory and cannot be contractually eliminated by the parties or 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 on **(i)** the tenant's opposition to works ordered by public authorities; **(ii)** a delay of more than three months in the payment of the rent, charges/costs or expenses; or **(iii)** a delay of more than eight days in the payment of the rent, on more than four occasions, whether or not consecutive, within a period of 12 months. In such cases the contract can be terminated by means of a written communication with acknowledgement of receipt sent by the landlord to the tenant. If the decision to terminate the lease is based on **(ii)** and **(iii)** above, the tenant may still prevent such termination, provided that the overdue amounts are paid within one month of the corresponding termination notice being served. The tenant may only use this mechanism once throughout the lifetime of the lease contract.

## 5.6.3 Leases for housing purposes

**Freedom of contract:**

Lease agreements for housing purposes, unlike lease agreements for non-housing purposes, have some degree of contractual freedom. Some of the most important matters are mandatorily established by law, including the rules governing early termination and opposition to the renewal of the lease agreements.

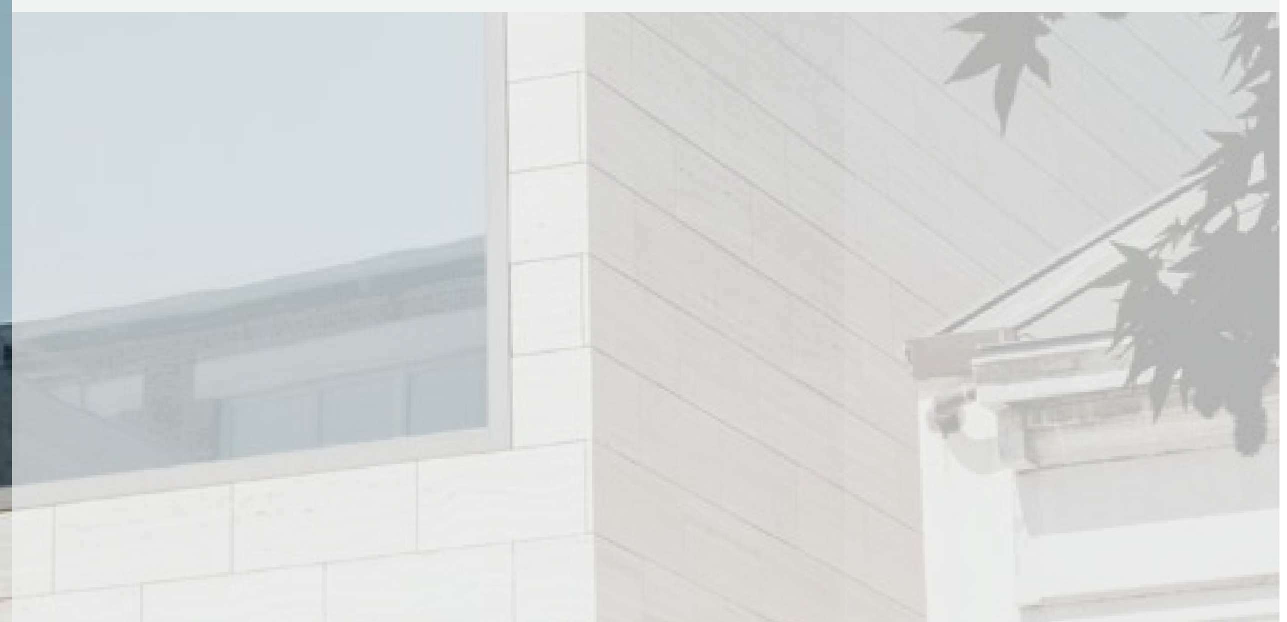
**Term:**

Lease agreements for housing purposes may also be entered into for a fixed term (with an initial term of up to 30 years and a minimum of one year) or be of an unspecified duration. Unless otherwise agreed by the parties, the fixed-term agreement will automatically renew for equal, successive periods of the same duration or a duration of three years if the duration is shorter, unless any party serves prior written notice within the legally established term.

| //Opposition by landlord | //Opposition by tenant |
|---|---|
| 240 days for leases with a term of ≥ 6 years | 120 days for leases with a term of ≥ 6 years |
| 120 days for leases with a term of ≥ 1 year and < 6 years | 90 days for leases with a term of ≥ 1 year and < 6 years |

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

The tenant is entitled to oppose to the renewal of the lease; the tenant may also terminate the lease at will if at least 1/3 of the lease duration or corresponding renewal period has elapsed by providing prior written notice of at least 120 days by reference to the intended termination date.



**Termination by landlord of leases with an unspecified duration lease agreements by the landlord:**

The landlord may terminate unspecified duration lease agreements in case of:

**(i)** need of the leased property as housing for the tenant or their first line descendants;

**(ii)** demolition or execution of construction works that will require the vacancy of the leased property, provided that no place with equivalent characteristics to those of the leased premises will result, where the maintenance of the lease is possible; or

**(iii)** zat will, by serving a five-year prior written notice.

**Termination of unspecified duration lease agreements by the tenant:**
The tenant may terminate a lease with an unspecified duration, provided that six months of the lease's duration has elapsed, by providing prior written notice within the legally established term.

## // Prior notice for termination by tenant

**120 days for leases with a term of ≥ 1 year**

**60 days for leases with a term of < 1 year**

If the landlord terminates the agreement pursuant to scenario iii above (i.e. at will by providing prior notice of five years), the tenant is allowed to terminate the agreement before the five-year period ends by providing prior written notice within the legally established term.

**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 if the lease agreement involves 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 in the event of the sale of leased property:**
The aforementioned rules concerning leases for non-housing purposes also apply.

## 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 that date. A distinction is made between:

**(i)** lease agreements for housing purposes entered into after the entry into force of the former Urban Lease Regulations (RAU) i.e. on 18 November 1990, and lease agreements for non-housing purposes entered into after the entry into force of Decree Law 257/95 of 30 September ("DL 257/95"), i.e. on 5 October 1995; and

**(ii)** lease agreements for both housing and non-housing purposes entered into before the entry into force of those laws.

### Agreements for housing purposes executed after the entry into force of the Urban Lease Regulations (RAU) and agreements for non-housing purposes executed after the entry into force of DL 257/95:

For such agreements, the transitional legal framework states that the former "limited duration lease agreements" (*arrendamentos de duração limitada*), currently referred to as "fixed term leases", are automatically renewed (unless any party opposes the renewal) at the end of the respective term and for a period of two years (in the case of residential lease agreements) or three years (for non-housing lease agreements), except for due provision made to another renewal period.

The transitional system establishes that lease agreements without limited duration are subject to regulations on contracts of an unspecified duration introduced by the NRAU.

However, they are subject to several special features, such as the non-application of the landlord's right to at-will termination by means of prior written notice, in the event the tenant is 65 years of age or older, or has a degree of disability exceeding 60%.

### Agreements for housing purposes executed before the entry into force of the Urban Lease Regulations (RAU) and agreements for non-housing purposes executed before the entry into force of DL 257/95:

The transitional legal framework establishes that the former "limited duration lease agreements", currently referred to as "fixed-term leases", are deemed as automatically (unless any party opposes renewal) renewed at the end of the respective term for a period of two years (in the case of residential lease agreements) or three years (for non-housing lease agreements) unless contractually stipulated otherwise.

The transitional regime states that lease agreements that are not limited in duration are subject to the regulations on non-fixed term lease agreements introduced by the NRAU, subject to specific particularities, including the following:

**(i)** the non-application of the landlord's right to terminate the lease at will; and

**(ii)** 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 to a location that is similar to the leased area if the tenant is 65 years of age or older or has a proven degree of disability exceeding 60%.

## 5.6.5 Procedure regarding the update of old rents

The **NRAU establishes a procedure to update rents** resulting from agreements entered into prior to the entry into force of DL 257/95 with the aim of updating the rent to market value. This rent update is based on a **negotiation process between landlord and tenant** within the context of the **transition of the leases to fall** within the scope of the **NRAU** as specifically provided in the law.

The transitional system establishes that lease agreements that are **not limited in duration are subject to regulations** on unspecified duration lease agreements introduced by the NRAU. However, they are subject to several special features, such as the non-application of the landlord's at-will termination right if the tenant is 65 years of age or older or has a degree of disability exceeding 60%.

## 5.6.6 Urban rehabilitation

In order to promote the rehabilitation of properties, a legislative reform carried out in 2012 simplified the urban licensing procedure required for urban rehabilitation as well as the termination of lease agreements for such purposes.

Since September 2012 a special procedure has been applicable to prior licensing control regarding buildings **at least 30 years old that are greatly deteriorated.** According to this procedure, the execution of works to such buildings **does not require a construction licence** and is merely subject to prior communication to the corresponding entity.

If the landlord intends to carry out remodelling construction works or extensive renovations, the landlord may terminate the agreement without having to resort to judicial means and obtain the release of the leased property, provided that the landlord relocates the tenant or, alternatively, pays the latter the corresponding compensation (the tenant's relocation is mandatory whenever the landlord and tenant do not agree otherwise and the tenant is **65 years of age or older or has a proven degree of disability higher than 60%).**

# 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 higher) at a rate of:

| | |
|---|---|
| 0% to 7.5% | (i) on residencial property |
| 6.5% | (ii) on other urban property or land for construction |
| 5% | (iii) on rural property |
| 10% | (iv) whenever the purchaser is not a natural person and is resident in a country, territory or region benefiting from clearly more favourable tax regulations, as enumerated in the list approved by Ministerial Order 150/2004 of 13 February ("Listed Tax Haven") or is an entity that is directly or indirectly dominated or controlled by an entity resident in a Listed Tax Haven. |

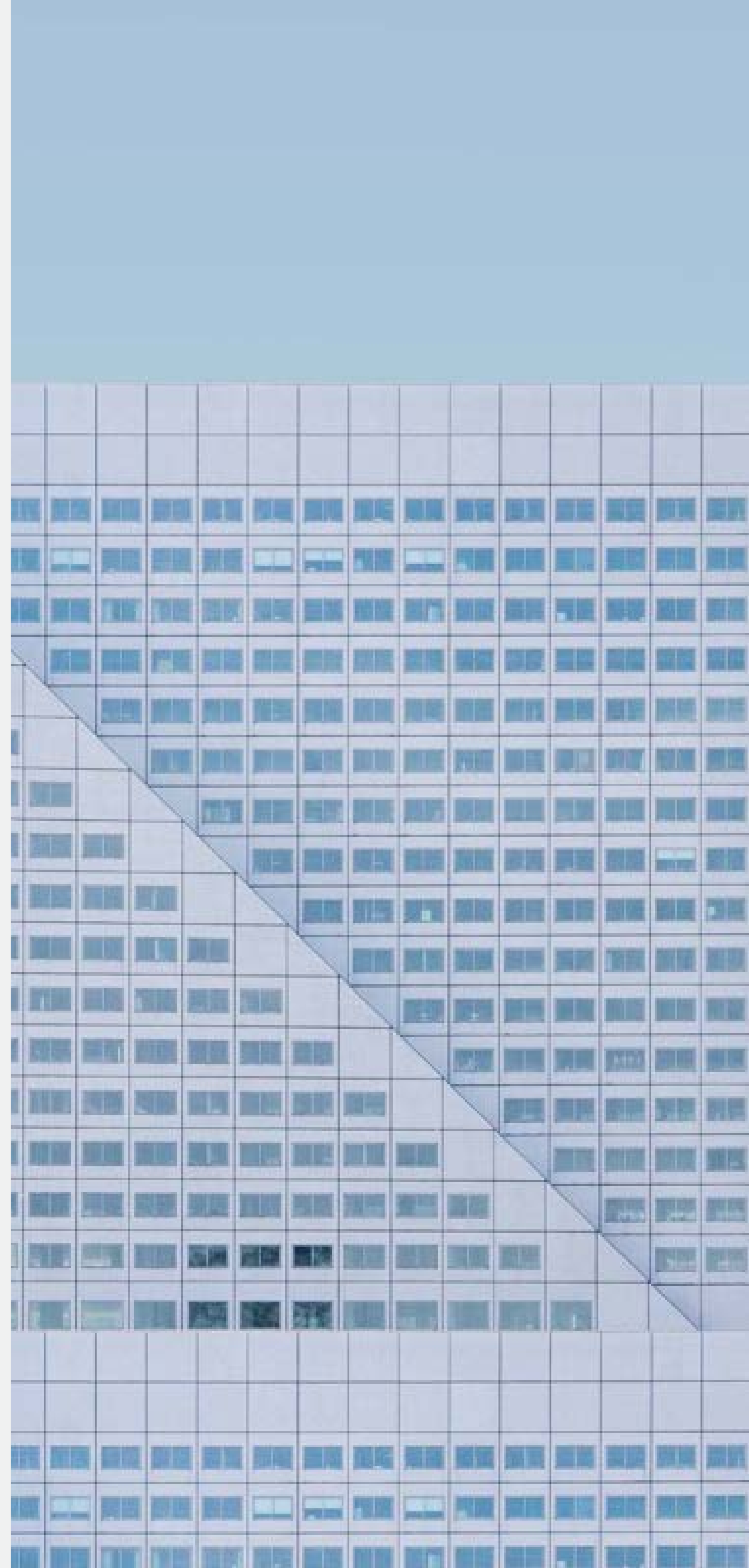
### Special Stamp Tax

Stamp Tax at a rate of 0.8% is also payable on property purchases and levied on the same amount as that subject to IMT (unless an exemption from 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 specific conditions are met, the parties may waive the applicable VAT exemption, in which case VAT will be due (at the standard rate of 23%, which must be self-assessed by the purchaser and, if the property is fully dedicated to an activity subject to – and not exempt from – VAT, to be immediately deducted).



## 5.7.2 Ownership

### Real Estate Tax ("RET") and Addiotional Property Tax ("ARET")

RET is annually due on the property's taxable value and is payable by property owners as at 31 December of each year. RET rates currently vary between 0.3% and 0.45% for urban property and land for construction. These rates are increased by 300% for urban property qualified as being "abandoned" or "in ruins". The rate applicable to rural property is 0.8%. The RET on property owned by residents who are not natural persons and who reside in a Listed Tax Haven is 7.5%. The same increased rate applies to property owned directly or indirectly by an entity that is dominated or controlled by an entity resident in a Listed Tax Haven.

As of 1 January 2017, ARET also applies on the sum of all registered tax values of properties with residential purposes and plots of land for construction held by the same owner. The applicable rates are 0.7% for natural persons, 0.4% for corporate entities and 7.5% for entities resident in a Listed Tax Haven. Natural persons only pay ARET on the taxable value exceeding EUR 600,000, but are subject to an increased rate of 1% on the portion of the taxable value exceeding EUR 1M and 1.5% on the portion of the taxable value exceeding EUR 2M.

### VAT

Lease agreements are generally exempt from VAT.

However, if specific 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).

### Special Contribution

A special contribution may apply to new property developments whenever the increase in the value of plots of land for construction is due to major infrastructure public works carried out mainly in Lisbon or Porto (including their outskirts). The applicable rate usually varies between 20% and 30%, levied on the increase in value referred to above, and is due by the individual or entity in whose name the respective building permit has been issued.

### Income Tax (Non-resident investors)

Rental income obtained by non-residents from properties located in Portugal is taxable at a special rate of 28% for natural persons and 25% for corporate entities. In both cases the income is subject to a 25% withholding tax whenever paid by entities that are obliged to have an organised accounts system.

Non-resident investors must file a declaration with the Portuguese tax authorities notifying them of the start of activities prior to initiating property rental activities, as well as file 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 natural persons and of **25% for corporate entities.**

Those capital gains may nevertheless be tax-exempt in Portugal if a double taxation treaty applies.

### VAT

As a general rule, the transfer of real estate properties is exempt from VAT.

However, if specific 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 self-assessed by the purchaser and, to the extent the property is fully dedicated to an activity subject to – and not exempt from – VAT, to be immediately deducted).

**Capital gains may nevertheless be tax-exempt in Portugal if a double taxation treaty applies.**

## 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 include the use of **(i)** a company resident in Portugal (**"SPV"**); **(ii)** a property investment fund or company (FIIs and SIIMOs) and **(iii)** a property investment and management company (**"SIGI"**). The following is a summary of the applicable tax regimes:

| // Tax | // SPV | // FII / SIIMO /SIGI |
|---|---|---|
| IMT and Stamp Tax | The acquisition of an SPV is not subject to IMT or Stamp Tax, provided that **(i)** the properties owned by the SPV do not represent more than 50% of the SPV's total assets or **(ii)** the properties are allocated to commercial, agricultural or industrial activities or **(iii)** the purchaser does not acquire at least 75% of the share capital or voting rights of the SPV.<br><br>The acquisition of properties by an SPV is generally subject to IMT and Stamp Tax at the standard applicable rates. | The acquisition of units in a FII 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 same rule may apply to the acquisition of shares in SIIMOs.<br><br>The acquisition of shares in a SIGI is generally subject to same RET rules referred for the acquisition of an SPV.<br><br>The acquisition of properties by FIIs, SIIMOs, or SIGIs is generally subject to IMT and Stamp Tax at the standard applicable rates. |
| Stamp Tax: Recurrent | No Stamp Tax is due on properties held by an SPV. | 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 the CMVM or published by the management entity of the FII or SIIMO, excluding the value of units in funds or shareholdings in investment companies) at a rate of 0.0125%. |
| Rental income and capital gains | Income obtained by SPVs, including rental income and capital gains are subject to CIT at the standard rate of 21%, and potentially increased by a municipal surcharge of up to 1.5%, as well as by a state surcharge of: (i) 3% on taxable profit exceeding €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) 9% on taxable profit exceeding €35 million.<br><br>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 legal framework on reinvestment is no longer applicable to immovable property accounted for as investment properties). The regulations allow an SPV to deduct 50% of capital gains from its taxable profit, subject to specific conditions. | FIIs, SIIMOs and SIGIs are subject to CIT on their annual taxable profit at the 21% standard rate.<br><br>However investment income, real estate income, and capital gains obtained by a FII, SIIMO or SIGI are not subject to CIT, except if the income is distributed or due by an entity resident in a Listed Tax Haven, or the income results from the transfer of an interest held in such an entity (furthermore, real estate capital gains obtained by a SIGI are only exempt from taxation if the corresponding properties were held for rental purposes by the SIGI for at least three years). Expenses incurred in connection with income – and gains not subject to CIT – are not deductible for CIT purposes. |
| Dividends distributed to non-resident shareholders / Unitholders | 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 natural persons and at a rate of 25% for corporate entities. Both rates are increased to 35% if the shareholders are resident in a Listed Tax Haven (these rates may be reduced if a double tax treaty applies). If the shareholders are corporate entities the dividends are exempt from tax in Portugal, provided that all the following conditions are met:<br><br>The shareholders are corporate entities resident in (a) an EU Member State, (b) a European Economic Area Member State that is bound by administrative cooperation in the field of taxation equivalent to that established in the European Union, or (c) a State with which a double tax treaty has been ratified, provided that the treaty includes provisions concerning administrative cooperation in the field of taxation equivalent to those established in the European Union;<br><br>The shareholders are subject to, and not exempt from a tax referred to in article 2 of Directive 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; the shares held represent at least 10% of the SPV's share capital; and the shares are held for a minimum period of one year. | Income distributed by a FII, SIIMO or SIGI to a non-resident shareholder is subject to CIT at a final withholding of 10%. |
| Gains realised by non-resident shareholders upon the transfer or redemption of shares/units | Capital gains obtained by non-residents upon 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 residents in a Listed Tax Haven or are entities directly or indirectly held by entities resident in Portugal with a stake 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 rate 25% – when obtained by corporate entities (unless no taxation is due in Portugal under the applicable double tax treaty). | Capital gains upon the disposal or redemption of shares or units of a FII, SIIMO, or SIGI are subject to a special final tax rate of 10%. |

# 5.8 Labour Legislation

## 5.8.1 Legal framework

Portuguese labour legislation is commonly considered as relatively rigid and highly protective of employees' rights. However, there have been significant improvements towards more flexible labour relations. The Portuguese Labour Code, approved by Law 7/2009 of 12 February (the **"Labour Code"**) is reflective of this effort. Furthermore, the Memorandum of Understanding signed between Portugal, the European Commission, the European Central Bank and the International Monetary Fund established the adoption of multiple measures aimed at ensuring greater flexibility in labour relations, resulting in numerous changes to Portuguese labour legislation.

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

Collective bargaining agreements may also supersede the rules established in the Labour Code and sundry legislation (unless otherwise stated).

**Portuguese labour legislation is commonly considered as relatively rigid and highly protective of employees' rights. However, there have been significant improvements towards more flexible labour relations.**

## 5.8.2 Employment contracts

### Types of employment contracts

Most employment relationships in Portugal arise out of:

**(i)** employment contracts subject to a defined term (whether fixed or unfixed), subsequently referred to as "temporary employment contracts" for simplicity; and **(ii)** employment contracts without an explicit term (open-ended agreements), or "indefinite employment contracts".

### Indefinite employment contracts

Under Portuguese law, indefinite employment contracts need not be executed in writing.

Nonetheless, and although 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 (e.g. the location of the workplace, normal working period, professional category, remuneration, holiday entitlement). Furthermore, specific clauses, including post-contractual non-competition obligations, must be instrumented in writing. As such, these more specific requirements make it advisable to execute all agreements in written form.

### Temporary employment contracts

Temporary employment contracts may only be entered into if the specific conditions stated in the Labour Code and indicated below, although collective bargaining agreements may allow the execution of temporary employment contracts in different or additional circumstances:

**(i)** To address a temporary need of the employer (e.g. the replacement of absent employees, the execution of a specific project, to address an exceptional increase in a corporation's activity, to cover for seasonal activities);

**(ii)** To recruit for a newly set-up corporation or a new business of uncertain duration in a corporation employing fewer than 250 employees; or

**(iii)** To hire very long term unemployed persons (i.e. individuals who, on the signing date of the contract, are at least 45 years old and who have been unemployed for at least 25 months).

As opposed to indefinite employment contracts, temporary employment contracts must be agreed in writing and, most importantly, the justification alleged for its execution must be clearly detailed in the agreement in order to allow the employee to understand why he or she is being hired through a temporary contract. The burden of proof regarding the justification for entering into a temporary employment contract falls on the employer. In addition, a clear link between the corresponding grounds and the duration of the agreed term must be included.

The duration is currently capped at two years (including renewals, which may not exceed three), although the total duration of the renewals cannot exceed the initial term of the contract (i.e. if the contract is entered into for an initial period of six months, subsequent renewals cannot have an aggregate duration exceeding six months) and the underlying grounds must also apply at the time of any renewal.

The term of unfixed temporary employment contracts cannot exceed four years and may not exceed the duration of the employer's temporary need.

Failure to comply with any of the aforementioned legal requirements will imply that the employment contract is not subject to a defined term, but rather to the general strict termination rules governing indefinite employment contracts.

### Service-commission contracts

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

Service-commission contracts may only be executed with employees rendering management or top-level duties who are under the direct authority of the corporation's board, as well as personal assistants of board members. Collective bargaining agreements may also establish that service-commission contracts can be entered into with employees carrying out positions that require a heightened level of trust of those management or top-level employees and employees admitted as heads of department, even if they do not directly answer to the board.

When executed with an employee who 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 the employer gives prior notice of 30 or 60 days depending on whether the contract has lasted for two years or more, respectively, and compensation is paid, which varies between 12 and 30 days of the monthly base remuneration and annuities for each complete year of service (depending on the execution date of the contract). Nonetheless, the parties may agree on the payment of higher compensation, a longer notice period, and other specific conditions.

Service-commission agreements may also be used to promote an already hired employee to a management position on a temporary basis. In these cases, termination of the service-commission contract will require the reinstatement of the employee to his or her previous position (and salary). The employee is also entitled to terminate the underlying employment contract and receive the statutory severance compensation.

**Service-commission contracts may be a valid alternative for the hiring of senior executives, for instance, given that the rules governing the termination of such agreements are much more flexible.**

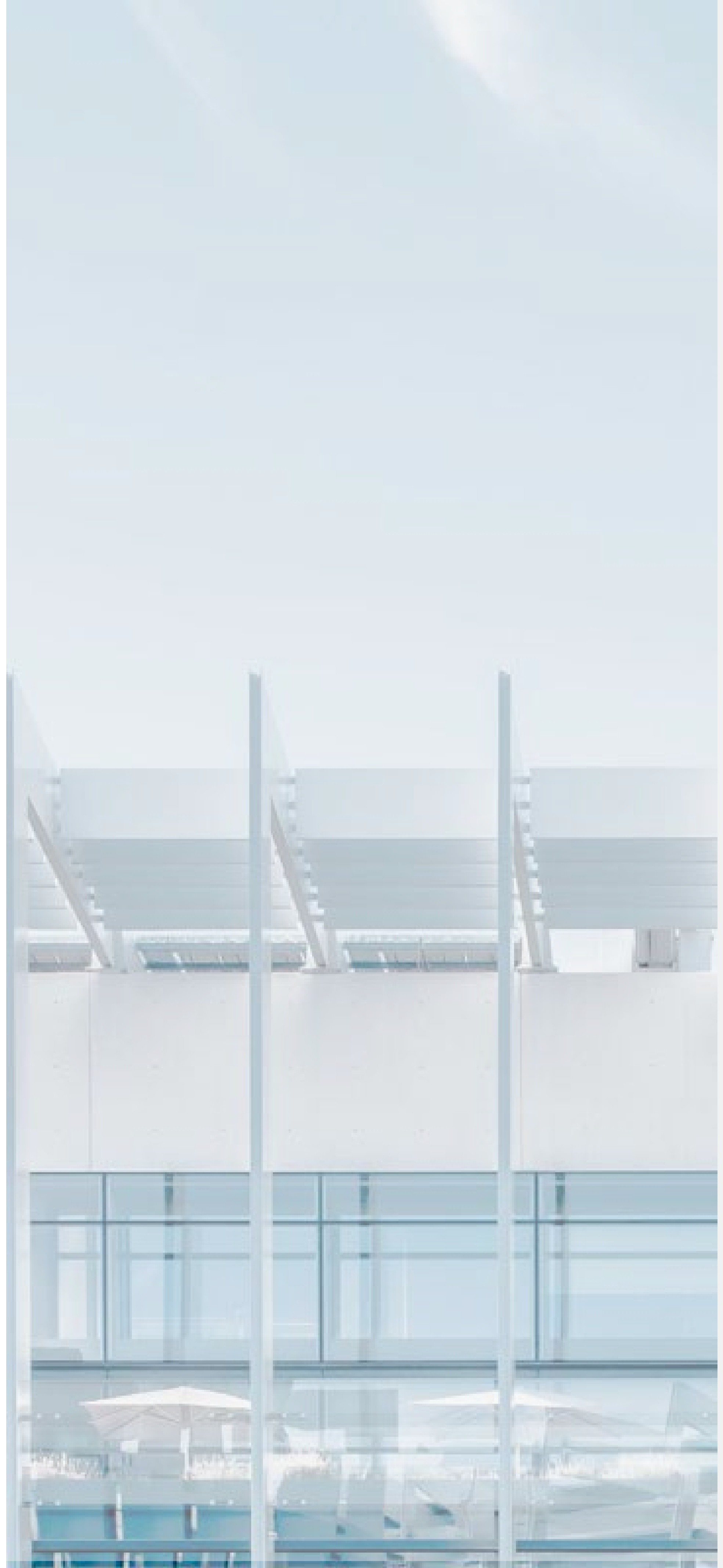
## 5.8.3 Termination of employment contracts

### Termination by the employer

#### General aspects

Under Portuguese law, the employer's unilateral termination of indefinite employment contracts is generally only permitted for disciplinary reasons (which requires, among other circumstances, a serious breach of the employee's duties) or as a result of collective or individual redundancy measures. In both cases, legal procedures must be followed and, in the case of redundancy measures, severance payments must be made to the affected employees.

Temporary employment contracts, on the other hand, may be terminated pursuant to the general rules applicable to indefinite employment agreements as well as at the end of their relevant term, provided that a prior written communication is served to the employee within the legally established period. Unilateral termination by the employer will trigger the obligation to make a severance payment to the employee for an amount that may vary between 12 and 18 days of base remuneration and annuities for each complete year of service (depending on the type of term and the signing date).



#### Dismissal on objective grounds

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

Apart from being based on objective reasons (i.e. market-related, structural or technological grounds or the shutdown of a unit or department), the assertion of objective criteria for the selection of the impacted employees must be evidenced by the employer.

The dismissal decision within the scope of a redundancy procedure must be communicated by means of prior written notice to each employee within the legally established term for doing so.

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

## Unlawful dismissal

If the employer dismisses an employee without cause, or in breach of the applicable legal requirements, the dismissed employee may challenge the dismissal in 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 payments to which they would have normally been entitled (including back pay, which will also take into consideration salary, holidays, legal subsidies, etc.) as from the month preceding the commencement of the claim and until the final judicial decision, from which any amounts they may have received during the same period and to which they would have otherwise not been entitled will be deducted; and

(ii) reinstatement to their former position or, alternatively, and at the employees' discretion, to receive an indemnity that the court will calculate for an amount equivalent to between 15 and 45 days of base salary (and any service bonuses) per complete year of service or fraction thereof, subject to a minimum of three months of 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 to the serious detriment of the company's business and the basis for the opposition was not deliberately created by the employer. In this event, however, the amount of the indemnification owed to the employee will range from 30 to 60 days of the employee's base remuneration and annuities per year of service, subject to a minimum of six 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 give 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 contribution rate is 34.75%, with 11% being borne by the employee and 23.75% borne by the employer.

Directors and board members of commercial companies are currently subject to the same social security rate as employees, which is levied on a minimum monthly remuneration of €480.43 (for 2023).

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 social security contributions in Portugal, provided that there is an international agreement on social security matters in place between Portugal and the relevant country and that they are able to evidence their enrolment in such foreign social security system.

### Labour Compensation Funds

Compensation owed as a result of the termination of employment agreements is entirely borne by the employer. However, on 1 October 2013, Law 70/2013 of 30 August and Order 284-A/2013 of 30 September created the Labour Compensation Funds, the purpose of which 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 owed for termination of their employment agreements.

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

### National minimum national wage

In 2023, the national minimum wage for employees whose weekly working schedule is 40 hours is €760 (the amount is slightly higher in the Islands of Madeira and the Azores higher). This amount is usually updated annually, 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 holiday allowances, each of which is roughly equivalent to one month of salary.

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 types of projects). However, the key driver in choosing between direct or indirect investments is usually the tax implications (see section 6.7 below, Tax Overview).

For indirect investments, Spanish law offers a broad range of corporate forms, including limited liability companies and SOCIMIs (as further detailed below in section 6.2, Property Vehicles), 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 three 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 authorizations 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 estate 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 specific 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 "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 must therefore be taken into account when structuring an investment.

**The most common type of ownership interest which investors are likely to come across is *propiedad en pleno dominio* (freehold property).**

### 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, which only require a written contract.

However, in practice, due to the additional protection afforded 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 various fees, including those of the notary). Notaries' fees 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 not be highly sophisticated, it is becoming increasingly common for high value properties to see exceedingly detailed (and long) contracts, in line with Anglo-Saxon approaches.

Forward purchase agreements are often used in current Spanish practice. Forward funding agreements first arrived in Spain in the 1990s, particularly in the context of office developments involving institutional investors, although they are becoming increasingly popular again.

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

## 6.1.4 The Land Registry

Title of ownership to – and in rem rights in – real estate property can be registered with the Land Registry.

The Spanish Land Registry system combines elements which are familiar to the German and French systems. Although registration with the Land Registry is not compulsory (except for mortgages and specific types of surface rights, for which registration is required for validity), registration has highly important implications.

The main consequence of registering 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 registered 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 the registration of 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 limited participation exemption regime on dividends and capital gains (effective CIT rate of 1.25%) derived from the participation in other Spanish SPVs. SOCIMIs are a better fit for investors looking to hold multiple 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), and are instead 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 € 1. However, two rules are established to safeguard the interest of creditors in return: (i) a sum equal to at least 20% of the profit must be allocated to legal reserve until the reserves, together with share capital, reaches €3,000; and (ii) in the event of liquidation, if the company's assets are insufficient to meet the company's obligations, the shareholders are jointly and severally liable for the difference between €3,000 and the amount of the subscribed capital.

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 fifth 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 exiting shareholders are to be redeemed at their "fair" value (as determined by an independent expert appointed by the Commercial Registrar if the parties fail to agree on the fair value or the appraiser 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.

See section 6.2.4. for the acquisition of shelf companies.

## 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 maintaining a SOCIMI structure is higher than those associated with SLs. After they were initially introduced with a legal framework failed to make them sufficiently attractive (with only a few SOCIMIs having been originally set- up), subsequent improvements to applicable regulations have 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, 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 "BME Growth segment of BME MTF Equity") must be free floating on the stock exchange and held by a minimum of 20 different minority investors (i.e., those holding less than 5% of the total shares of the SOCIMI).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 three years. Otherwise, all rents resulting from such assets would be taxed at the general CIT rate (25%) with retroactive effects ( although this does not imply that the SOCIMI is prevented from applying the 0% rate to all other investments).

In addition, at least 80% of the SOCIMI's 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 three 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

SOCIMI 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 three-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. According to the tax authorities' current interpretation, dividends distributed by a SOCIMI to its EU-based parent companies may be exempt under the EU participation exemption regime (the Parent-Subsidiary Directive) provided that the corresponding requirements are met. However, gains may be exempt for non-resident shareholders holding less than 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). A new 15% rate on the SOCIMI non-distributed profits has been recently introduced.

## 6.2.4 Incorporation and Acquisition of Spanish Companies

There are two ways of becoming the owner of a Spanish *special purpose vehicle* company:

(i) incorporating a new company from scratch; or

(ii) acquiring a shelf company with no previous activity.

Acquiring a shelf company is the most efficient and common method as it can be done much quicker than incorporating a new Spanish entity, which could take up to three weeks. By contrast, acquiring a shelf company takes less than a week, and the cost of doing so is not significantly higher than incorporating a new company.

**In practice, acquiring a shelf company with no previous activity is the preferred choice for investors to be able to use a Spanish SPV company in any new project.**

### Preliminary steps

In both cases, the legal representatives and directors of the new company must be properly identified by means of a Spanish tax identification number (either Spanish national ID or, for non-resident foreigners, a Spanish tax identification number). If the party acquiring the Spanish company or acting as legal representative or director is a company, it will also need a Spanish tax identification number.

These tax identification numbers can be obtained in the name of the company, its representatives or its directors by engaging an agency or third party and empowering it with the corresponding powers of attorney granted in a form legally acceptable in Spain (i.e., granted before a Spanish notary or with the Apostille affixed pursuant to The Hague Convention 1961 if the powers are granted by a foreign notary of a country party to the Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations or granted before the Spanish consulate in their country of residence).

A Spanish tax identification number is also required for any party appearing before a notary public in relation to any act or transaction in Spain.

### Incorporating a new company

If the goal is to incorporate a new company instead of acquire a shelf company, the following steps must be completed:

**(i)** to reserve the corporate name of the new company, which will require obtaining a negative use certificate from the Commercial Registry confirming that the name is not in use.

**(ii)** to draft the company's articles of association, for which the following information is required:

**(a)** Corporate and registration details, such as the corporate form, name, address and company purpose.

**(b)**Share capital and value of each share.

**(c)** Structure of the company's management body, which could have: (i) a sole director, (ii) two or multiple joint or joint and several directors; or (iii) a board of directors (at least 3 members).

**(iii)** to open a bank account in the name of the newly created company in order to deposit the share capital amount in the account and to obtain a certificate evidencing the deposit to be attached to the public deed described in paragraph (vi).

**(iv)** to sign and grant the corresponding public deed of incorporation before a Spanish notary and attach the relevant corporate documents (such as the articles of association).

**(v)** once the incorporation deed is granted, to request a tax identification number for the newly created company.

**(vi)** to register the deed with the Commercial Registry; and

**(vii)** to obtain a definitive tax identification number and register the new company for the purposes of the tax on economic activities.

### Acquiring a shelf company

As already mentioned, some of the steps described in the previous section will be saved if a shelf company is purchased. Therefore, in order to acquire a shelf company the following steps must be followed:

**(i)** to grant the deed of sale and purchase of the shelf company's shares. Once the transfer has been executed, if the acquirer is a foreign or natural person, it will be necessary to file a foreign investment report (D-1A form) with the Foreign Investment Registry concerning the acquisition of Spanish shares by a foreign company. The form must be attached to the public deed of acquisition within the following 30 calendar days.

**(ii)** to adopt the necessary corporate resolutions such as appointing the new management body or changing the corporate details (e.g., company's registered address, purpose, etc.) by modifying the articles of association. These provisions must be recorded in a separate public deed and registered with the Commercial Registry.

# 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.

**Mortgages are executed or amended in the form of a public deed, which must be registered with the relevant Land Registry to create a perfected security interest.**

## 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) and 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—.

Standard practice is to execute the loan and the mortgage in a single document, which is usually then granted in the form of a notarial public deed (or executed in private and afterwards converted into a public document before a notary public).

The determination of the maximum amount to be guaranteed by the mortgage (including the amount of principal, interest and costs associated with its execution and foreclosure) should be expressly provided for in the deed of incorporation of the mortgage (and hence be filed with the Land Registry).

The validity and enforceability of a mortgage also requires by law the prior issuance of a valuation of the property to be encumbered. This valuation (the so-called “tasación ECO”) must be drafted and certified by an official and qualified valuation entity that has been homologated by the Bank of Spain.

### 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 materialized on property posted as a guarantee.

### Floating mortgage

According to Spanish law there also exists the possibility of creating a floating mortgage, which is a security interest created over a specific real estate asset to secure an indefinite number of liabilities up to a maximum cap. Floating mortgages can only be granted in favour of financial institutions and public authorities (and in the latter case, exclusively to guarantee tax or social security receivables).

### Priority

Priority of mortgage interest 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 waive 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.

Subject to the Code of Good Banking Practices to which most Spanish banking entities have adhered, the above may vary if the borrower is an economically vulnerable natural person, as such borrower would be entitled to request a reduction on the interest rate, the restructuring of the debt and a debt-to-asset deal (the lender being under the legal obligation to accept the debt-to-asset deal). Additionally, in the event that the foreclosed asset is the borrower's dwelling, the borrower may request that the lender remain the lessee of the asset for a maximum period of five years.

On a separate topic, if a borrower becomes insolvent, the lender cannot foreclose the mortgage until after one year has elapsed since 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

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, ordinary 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 is created and registered with the relevant public land 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).

Whereas there is freedom of form to incorporate pledges with displacement, pledges without displacement must be executed in a public deed before a notary public and registered with the Chattel Property Registry.

Similarly to mortgages, pledged assets cannot be appropriated by the creditor (except for financial pledges if certain conditions are met), but must be subject to foreclosure proceedings instead.

### Personal guarantees

Normally, borrower's shareholders and/or subsidiaries or related companies provide, to the extent permitted by applicable law (specifically, financial assistance prohibition and conflict of interest restrictions), first demand guarantees or other types of personal guarantees in respect of the borrower's obligations under the financing documents.

A personal guarantee may be created by agreement between the creditor and the guarantor or by operation of law. In order to facilitate the enforcement of a personal guarantee against a Spanish company, a settlement clause establishing the method of calculating the outstanding debt is usually included.

Lenders usually request that all personal guarantees created under the finance documents be first demand guarantees. First demand guarantees, which are not regulated by law, are abstract and independent from the main obligation, creating a primary liability on the guarantor, and are not subject to the debtor's assets being realised.

# 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 () or directives of territorial zoning (), 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 (), General Zoning Plans () 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 ().

At the second level, specific zoning (), Partial Plans () 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 (), which define, among other elements, the specific provisions for the implementation of public infrastructures. At a lower hierarchical rank, Detailed Studies () 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 (or); urban land (), which can either be consolidated or non-consolidated; and land suitable for development (), 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 licences 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").

Transposition of the Directive into domestic law was carried out through Law 17/2009, of 23 November, on free access to service activities and their exercise. In addition, Law 25/2009, of 22 December, amending diverse laws to adapt Law 17/2009 adapted State laws, most of them sectorial, to Law 17/2009.

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

**(i)** The issuance of licences 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 licence 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 licence or preventive control (if duly justified and proportionate).

**(ii)** Communication or sworn declaration.

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

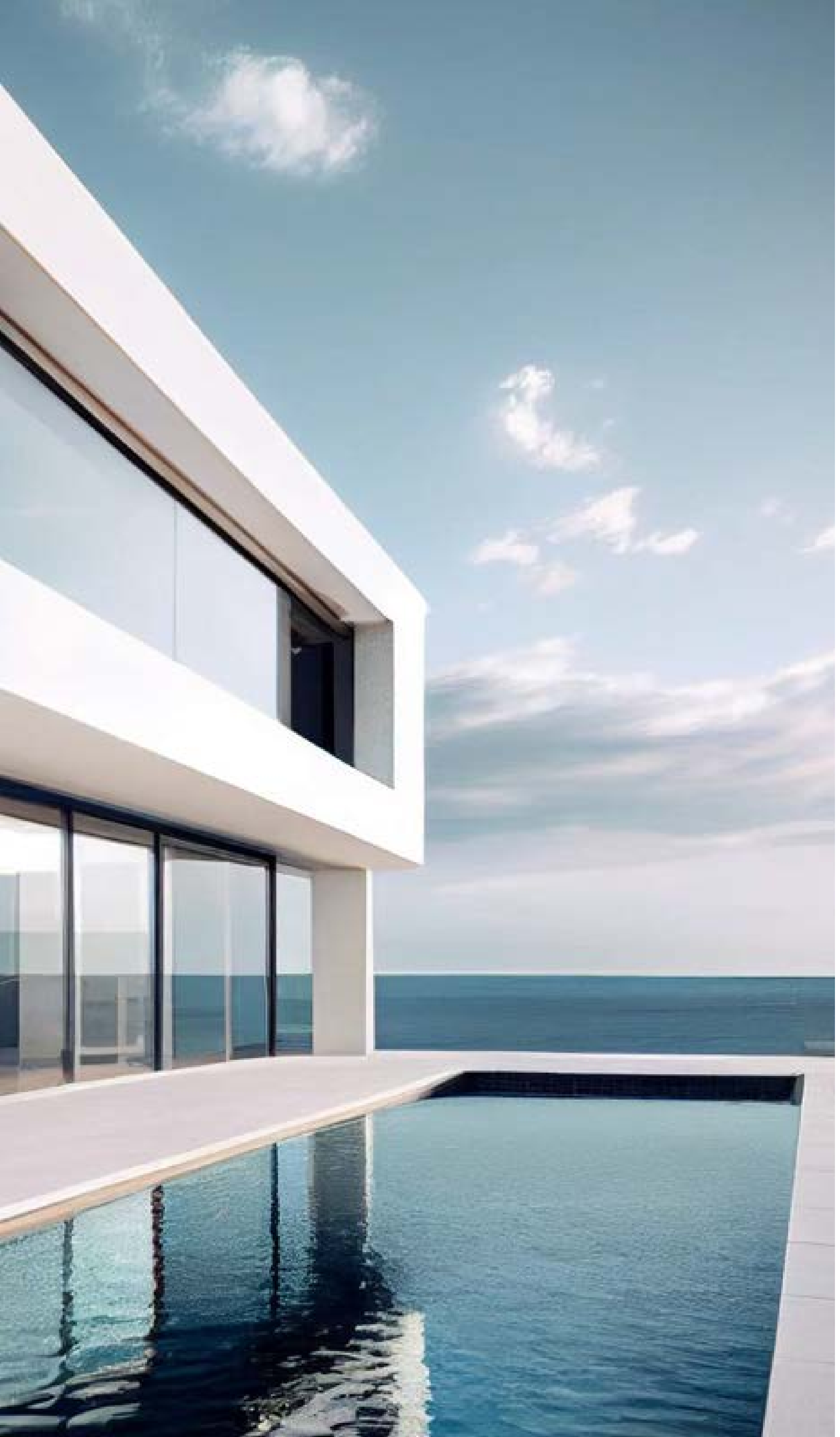
The regions and local authorities have also adapted their respective regulations to the European and State-level legal frameworks by simplifying intervention procedures in real estate projects, limiting licences as a mechanism of preventive control to the interventions with most relevance due to their 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 to start works or carry out activities. 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 (normally those requiring a technical project pursuant to Law 38/1999, of 5 November, regulating building construction) are, however, still subject to preventive control by local authorities through the granting of licences. The detailed rules regarding licences are normally established in local regulations, and may be, and usually are, different in each municipality. Local regulations mainly include construction licence and first occupancy license (licences related to the construction works) and activity and opening licences (licences 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, sine die, a project according to specific zoning regulations that might no longer be in force after the construction started.

**Over the last few years, communications and sworn declarations have gained importance as mechanisms for authorizing real estate projects in Spain.**



## 6.4.2 Special Licensing

### Commercial licensing

#### (A) Introduction

As anticipated, the Services Directive, aimed at ensuring the freedom of establishment and the right to provide services within the European Union 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 licence 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 licence, 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.

#### (B) 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 summarized as follows:

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

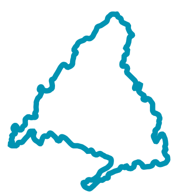
**(ii)** Nevertheless, a framework requiring prior authorization may be set up by specific regional legislation for cases justified by an overriding reason related to public interest, such as environmental, zoning and planning or historic- artistic heritage reasons. On the contrary, it can never be based 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 centres. The following sections offer three examples of the practice as governed by regional legislation.

In addition, the operation of these activities is also subject to the urban planning control, explained in previous section 6.4.1, which, depending on the type of establishment, may require an additional sworn statement (or similar) or even a pre-licence.

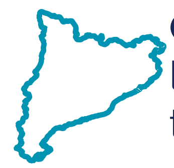
**(C) Brief reference to the legislation of specific regions**



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

Instead, Madrid's regulations establish the mechanics of sworn statements (*"declaraciones responsables"*) through which the legal or natural persons attests to the authorities, at their 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 – i.e. those with a sales area equal to or greater than 800 and 1,300 $m^2$, 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 $m^2$ – can only be located in urban areas of large cities, i.e. those with a population of 50,000 inhabitants or more. The possibility of locating any of these categories in the outskirts of the referred cities, in certain exceptional cases, has been judicially confirmed by the Constitutional Court of Spain.

Moreover, among other more specific cases, "large commercial- territorial establishments" (2,500 $m^2$ or more) are subject to the pre- licensing scheme. When granting the licence, 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 favouring 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 $m^2$.

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.

Moreover, the regional government approved a "Territorial Action Plan on Commerce" through Royal Decree 215/2020, of 29 Dececember, that established the criteria to localize new retail establishments, classifying strategic commercial areas into four types: areas of new central commercial importance, areas of commercial opportunity, areas of commercial dynamization and commercially saturated areas.

The declaration of an area as commercially saturated may result in the temporary suspension of the granting of licences and authorizations for the installation of new commercial activities and, ultimately, the establishment of more requirements.

It should be noted that the Regional Parliament is currently processing a new Sustainable Retail Law, which, if approved, will prevent projects that are non-compatible with the sustainability criteria included in the Territorial Action Plan from obtaining authorization (this make implementation of retail parks exceeding 120,000 $m^2$ GLA particularly difficult).

## Tourism licensing

### (A) 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.

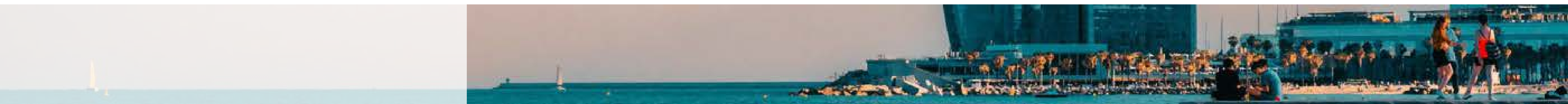
### (B) Brief reference to the specific legislation of the regions of Madrid, Catalonia and Valencia

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. In addition, the operation of these activities is also subject to the urban planning control, explained in previous section 6.4.1, which, depending on the type of establishment, may require an additional sworn statement (or similar) or even a pre-license.

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. In the Region of Valencia, legislation establishes mechanisms entitling municipalities to approve "Intervention Plans in Tourist Areas (PIAT)" to delimit saturated or mature tourist areas.

It should be noted that the municipalities of Barcelona, Madrid and Valencia, among other Spanish large cities, have passed specific zoning-touristic master plans that, in general, set the potential new tourist establishments on the outskirts of the city and exclude or limit the possibility of increasing the touristic offerings in the city centre, seeking to recover traditional districts for more permanent residential uses. In the case of Barcelona, the plan even sponsors a zone of natural decrease that permits neither the establishment of new establishments nor the expansion of existing establishments. One of the main specific purposes of those master plans is to monitor and regulate the segment of tourist apartments.



## 6.4.3 New Residential models

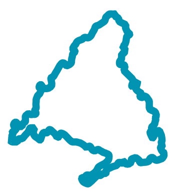
### Introduction

Housing needs and society itself have evolved over the years, and this process has been greatly accelerated in the wake of the COVID-19 health-crisis, resulting in citizens pursuing options that meet the needs of today´s world.

This has led to new residential models known as "collective residential models" that includes new formulas such as co-living and student housing.

This change makes it necessary for the autonomous regions and municipalities to modify the urban planning regulations to include these new trends.

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

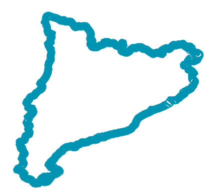


**Madrid:** The Region of Madrid does not regulate new residential models such as co-living, co-housing or student residences.

Under the current General Plan of Madrid, co-housing could be implemented as "collective housing" (*vivienda colectiva*) and student residences as "educational equipment" (*equipamiento educativo*) when linked to a university or a "community residence" intended for the habitual housing needs of groups that do not constitute family units, but which are united by ties of a religious, social or similar nature.

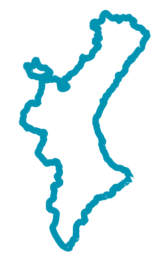
However, residential schemes such as co-living do not fall under any of the uses defined in the General Plan of Madrid. Co-living cannot be considered a touristic use or a community residence as the requirement regarding the existence of religious, social or similar nature ties is not met.

It should be noted that the municipality of Madrid has initially approved a specific modification of the planning and zoning regulations of the General Plan of Madrid pursuant to which, among other changes, new residential categories are introduced in order to cover new residential models. The modifications include two categories within the "residence class" (*clase residencia*): the already existing "community residence" (*residencia comunitaria*), which pertains to the concept of student housing, and "shared residence" (*residencia compartida*) pertaining to the concept of co-living.



**Catalonia:** Since 2019 regional regulations have included a definition of "institutional housing" and since 2020, a definition of "accommodations with complementary common areas" regulating the requirements that these accommodations must satisfy.

At the municipal level, in order to develop this regulation, the authorities recently approved a specific modification of the General Metropolitan Plan of Barcelona in order to regulate the housing-equipment system (*sistema de equipamientos de alojamiento dotacional*) in the Municipality of Barcelona, which involves the creation of housing equipment (*alojamiento dotacional*) as a subtype of community equipment defined in the General Metropolitan Plan.



**Valencia:** Neither the Region of Valencia nor the municipality of Valencia has specific comprehensive framework defining and establishing the profiles of these new residential models.

It should be noted that a draft project of the Collaborative Housing Law of the Region of Valencia has been submitted and is being processed. The draft offers some interesting definitions and regulations in connection with these new residential models.

At the municipal level, new models are not specifically regulated in the General Plan of Valencia and, therefore, they are framed in the context of community residential use (*uso residencial comunitario*). Specifically, the City Council of Valencia issued an interpretation that includes various specifications related to the permitting process depending on the kind and number of services rendered to residents.

# 6.5 Leases of Business Premises

## 6.5.1 Initial lease term

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 two 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 Act and the Spanish Civil Code.

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 five-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 Spanish Civil Code allows the tenant to renew the lease for a term equal to the periodicity of the rent payment (e.g., a month if the rent was paid monthly).

## 6.5.3 Rent review

The Spanish Lease Act does not regulate rent reviews for leases of business premises, 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 year seven).

### 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 might represent a significant cost for the owner.

### 6.5.5 Lease bond

Upon execution of the lease agreement, the tenant has to provide a bond equal to two months' rent and the landlord must deposit it with the competent authority. The lease bond cannot be reviewed (upwards or downwards) during the first five years if the landlord is a natural person or during the first seven years if the landlord is a legal person. From that point on, 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, such that the lease bond is always equal to two 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. Notwithstanding the above, a lease agreement (as in the case of many other agreements) may be terminated if the agreement is considered detrimental to the insolvency proceedings).

Any outstanding payment obligations under the lease agreement accrued since the declaration of insolvency onwards will be included under the insolvency estate. 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's costs up to that time, against the insolvency estate.

### 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 in section 6.7 for further detail.

## 6.6 Lease of Dwellings

In contrast to the freedom of contract governing lease agreements for business premises, agreements for the lease of dwellings cannot modify the provisions contemplated in Title II of the Spanish Lease Act to the detriment of the tenant.

### 6.6.1 Initial lease term

The lease term can be freely agreed by the parties, although the Spanish Lease Act establishes a minimum period of five years if the landlord is a natural person or seven years if the landlord is a legal person (mandatory for the landlord). If the contract establishes a term below that minimum, the agreement will renew itself for annual periods until that minimum term is reached unless the tenant notifies his/her desire to not extend the agreement.

### 6.6.2 Extensions

Furthermore, if neither of the parties express their intent to terminate the agreement once the minimum term has been reached, the agreement can be extended for annual periods for an additional three years. If the tenant continues to lease the property with the landlord's consent for 15 calendar days after the lease has expired, the Spanish Civil Code allows the tenant to extend the lease for a term equal to the periodicity of the rent payment.

Subject to the Royal Decree 20/2020, of 27 December, approved to remedy the economic consequences caused by the conflict of Ukraine amongst others, if the lease agreement terminates between 28 December 2022 and 30 June 2023, the lease agreement can be extended for an additional six-month period unless the landlord requires the property for personal use.

### 6.6.3 Rent review

Rent review is only applicable after the first year of the agreement if established in the lease agreement. If the parties fail to establish a mechanism for review, the rent will be reviewed according to the competitiveness guarantee index. Parties generally agree on annual rent reviews linked to the Spanish consumer price index, which is published monthly by the National Statistics Institute.

The review mechanism selected by the parties, pursuant to the cited legislation and until 31 December 2023, cannot exceed the competitiveness guarantee index if the landlord qualifies as a large owner, a condition applicable when the landlord owns more than ten properties or more than 1,500 m2. for residential use. If the landlord does not fulfil these conditions, the parties can agree on a mechanism that results in an amount exceeding the competitiveness guarantee index.

## 6.6.4 Lease bond

Upon execution of the lease agreement, the tenant must post a bond equal to one months' rent and the landlord must deposit that amount with the corresponding authority. The lease bond cannot be reviewed (upwards or downwards) during the first five years – if the landlord is a natural person – or during the first seven years – if the landlord is a legal person. From that point onwards, the lease bond will be reviewed in accordance with the terms of the lease agreement. Failing that, it will be reviewed, following the contractual rent-review provisions.

Further guarantees can be agreed upon with a cap equal to two monthly rents.

## 6.6.5 Assignment and subletting

The lease agreement cannot be assigned or sublet without the landlord's consent.

## 6.6.6 Maintenance and repair

According to the provisions on maintenance and repair duties, the landlord is obliged to complete the maintenance and repair works necessary to maintain the property in good dwelling condition. The tenant is obliged to allow the works, however if they last more than 20 calendar days, the tenant is entitled to a proportional rent reduction. The tenant can only carry out works with the landlord's consent.

## 6.6.7 Suspension of eviction

Pursuant to the above-mentioned decree, if the tenant is in an economically vulnerable position, judicial eviction and repossession procedures are suspended until 30 June 2023.

## 6.6.8 Insolvency

Refer to the section 6.5.8, Lease on business premises.

## 6.6.9 Brief reference to the Housing act project

### National Housing Act Project

The approval of an act on housing is currently being debated at the national level with the goal of guaranteeing access to housing and adapting the housing offer to current market demand by sponsoring the implementation of new forms of accommodation (such as co-living) and expanding the supply of social housing and housing facilities.

To that end, the legal concept of "stressed residential market areas" (*zona de mercado residencial tensionado*) is to be introduced to identify areas of Spanish cities with insufficient housing supply. The project also plans to create a public register of housing rental contracts, which will be linked to the regional registers of bonds and the Land Registry, to increase the information available to develop a rental price reference index system.

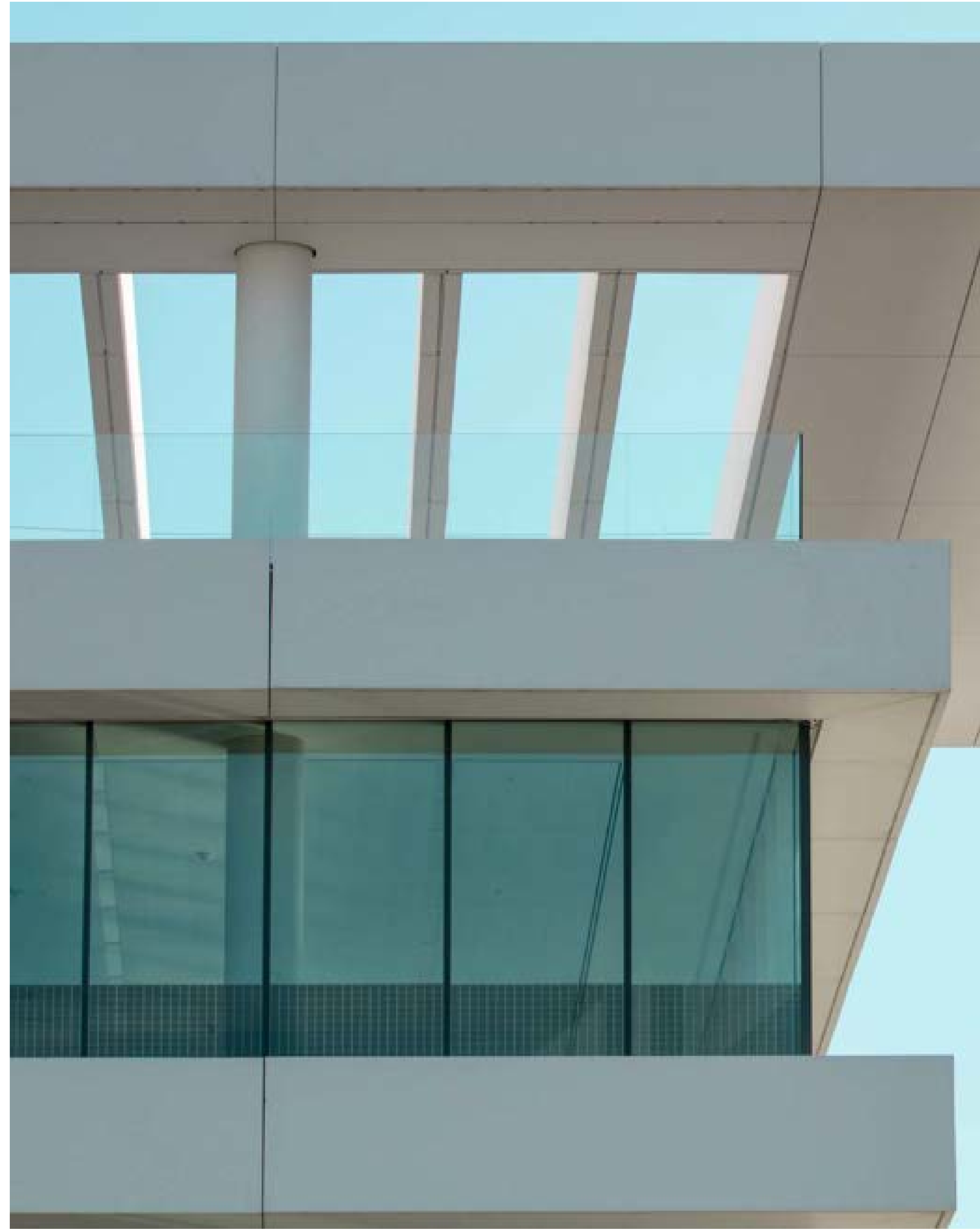
In its current form, the housing law draft entails the modification of the Spanish Lease Act to allow further annual extensions of the lease term (on top of the extensions mentioned in section 6.6.2) for an additional period of three years if the leased property is located in a stressed residential market area. It also imposes a limitation on a landlord to determine and review the rent if the landlord qualifies as a large owner (as defined in section 6.6.3).

The draft also creates tax incentives for landlords to promote the lease of dwellings.

At the moment this regulation is a working draft pending the approval of the Parliament (Congress and Senate), so its content is subject to further amendments.

### Reference to the Catalonian Housing Act

A similar act was approved in Catalonia on 18 September 2020, at the regional level to declare specific areas "stressed residential markets" within the region. The act's objective was to limit and moderate rental prices in those areas. The Spanish Constitutional Court's judgments 37/2022 and 57/2022 on 10 March 2022 and 7 April 2022, respectively, ruled the act unconstitutional as it considered that it infringed the principle of the transfer of authority between the state and the regions.



# 6.7 Tax Overview

## 6.7.1 Acquisition

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

Purchasing newly completed or restored properties from a developer 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 up to two parking spaces and storage rooms transferred together with a particular dwelling).

Purchasing used properties would be normally exempt from VAT but subject to non-recoverable Transfer Tax, the rate of which ranges between 2% and 13% depending on the region where the properties are located and the type of properties being transferred. 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 non-recoverable Transfer Tax.

### Stamp Duty

Stamp Duty should be payable by the purchaser upon the execution of a notarial purchase deed at a rate ranging between 0.25% and 3%, depending on the region where the properties are located and the type of properties being transferred. 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) regarding 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.

## 6.7.2 Ownership

### Rents from the lease of properties

Spanish resident companies should include rents from property leases in their CIT base, 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, but additional restrictions to the deductibility of certain expenses generally apply to them.

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 must 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 of urban property 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 rate applicable to rural or non-buildable properties (*terrenos rústicos o suelo urbano no consolidado*) ranges from 0.3% to 1.22%.

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 0.2% 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 at least two years. Companies carrying out leasing activities only should pay the Business Activities' Tax by applying a 0.1% rate on their properties' cadastral value. Companies carrying out a development activity calculate their Business Activities' Tax on the basis of the square meters developed.

### 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 the region of Catalonia, owners may additionally pay (i) a tax for any residential properties unoccupied for more than two years, (ii) a tax on accommodation in touristic establishments ("tourism tax"), and (iii) tax on large commercial premises.

### 6.7.3 Sale

**Capital gains**

Spanish resident companies should include capital gains realized on the transfer of properties, which are calculated 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 a 19% rate.

**Value Added Tax, Transfer Tax and Stamp Duty**

Please refer to section 6.2 on Acquisition of properties above.

**Local tax on the increase of value of urban land ("TIVUL")**

TIVUL is a local tax that applies to the transfer of urban land and is levied on the increase in the value of the land. 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 increase in the land's value. The Spanish Constitutional Court judgment 182/2021 dated 26 October declared the provisions to calculate the TIVUL base (value increase of the land) unconstitutional and void and, therefore, the regulations were amended at the national level. The new TIVUL regulations establish two different methods (at the taxpayers choice) to determine the taxable base:

**(i)** Objective assessment method: The taxable amount is the result of multiplying the cadastral value of the land at the time TIVUL accrues (i.e., when the property is sold or transferred) by the coefficient approved by the relevant municipality depending on the time elapsed since the previous acquisition of the property. The coefficients can be updated annually.

**(ii)** Real capital gain method: The tax base is the actual capital gain realized on the transfer of the property (i.e., the difference between the land's acquisition and transfer values).

**Sellers of urban properties should pay the TIVUL and Spanish resident companies should include capital gains realized on the transfer of properties.**

## 6.7.4 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) would have the following treatment:

**(i)** The capital gains realized on the transfer of the shares of a Spanish entity by another Spanish entity should be partially exempt from CIT (taxed at an effective 1.25% rate), 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, (ii) the shares were held by the seller for a minimum of one year, and (iii) the subsidiary company which shares are being transferred conducts a business activity for CIT purposes.

In addition, 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 purpose of avoiding taxation on the capital gains obtained upon the transfer of its subsidiary.

**(ii)** A share deal implies the transfer of any pending tax liability of the Spanish SPV to the purchaser. Purchasers of shares may also inherit two embedded tax costs: (i) 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, and (ii) other municipal tax liabilities (TIVUL) may also be inherited by the future acquirer (and should therefore be considered when negotiating the transfer price).

**(iii)** Regarding the indirect taxation of the sale, share transfers should be exempt from VAT, Transfer Tax and Stamp Duty, except in cases where the real objective of the share deal was to triggering the indirect taxes (VAT, Transfer Tax and Stamp Duty) that would have been payable on the direct 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 SOCIMIs

SOCIMIs (analysed in Property Vehicles section 6.2.3 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 or equivalent foreign REITs.

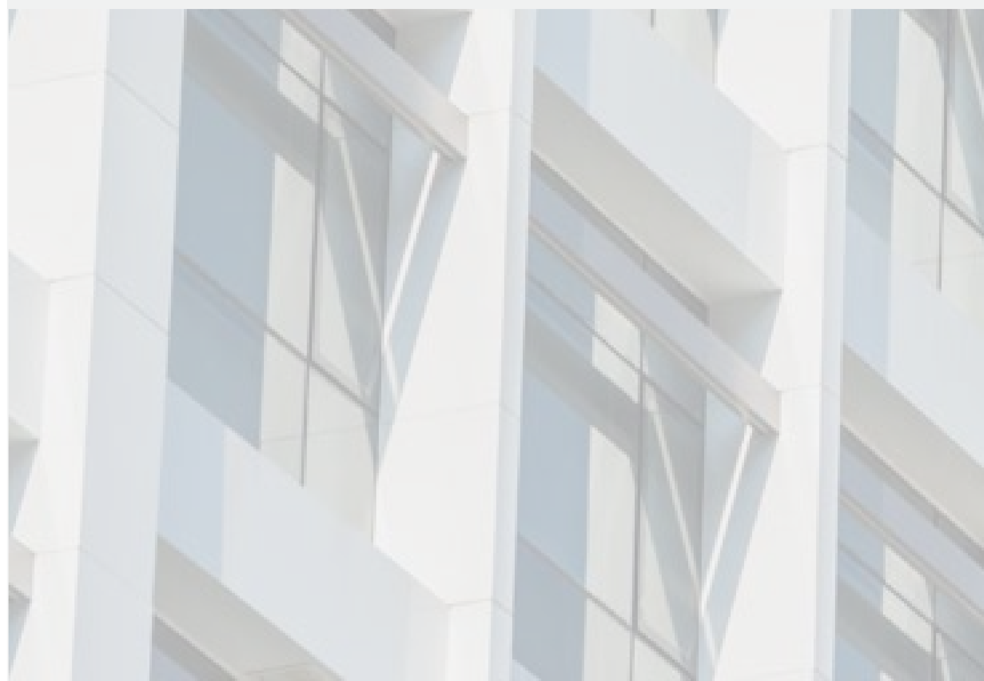
Entities opting for the application of the SOCIMI tax regime are generally subject to CIT at a 0% rate if they comply with the investment requirements and restrictions of the regime.

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. A new 15% rate on the SOCIMI non-distributed profits has been recently introduced.

For further detail on SOCIMIs and their tax regime please refer to section 6.2.3 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 (EDAV), with a 40% CIT allowance on rents deriving from the leasing of dwellings, under certain conditions (in practice, the EDAV CIT relief implies an effective rate of 15% if the company only obtains qualified income).



# 6.8 Labour Legislation

## 6.8.1 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 ("CBA"). CBAs 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.

## 6.8.2 Employment contracts

In Spain, there are two basic kinds of employment contracts: indefinite contracts and temporary contracts. Under Spanish law, the principle of "stability in employment" (*estabilidad en el empleo*) applies, which means that:

**(i)** Contracts must be indefinite unless there are certain circumstances and reasons that require them to be temporary.

**(ii)** Employees cannot be dismissed unless the dismissal is based on any of the grounds established by the law.

In Spain, the recent reform of Spanish labour legislation, which entered into force on 30 March 2022, establishes three main types of temporary contracts:

**(i)** Contract to meet production needs. This type of contract can be used in two different circumstances:

**(a)** To cover an occasional and unpredictable increase in the employer's workload that creates an imbalance between the available workforce and that needed as well as to cover annual holidays. The contract's duration cannot exceed six months, unless the CBA increases that limit to one year.

**(b)** To cover an occasional, predictable increase in the employer's workload that has a brief, determined duration. In this case, the employer is only allowed to hire employees for 90 discontinuous days within the calendar year.

Upon expiration of this contract, the employee has the right to receive a severance payment equivalent to 12 days' salary per year of service.

## In Spain there are two basic kinds of employment contracts: indefinite contracts and temporary contracts.

**(ii)** Interim contracts. This contract covers the situation in which an employee is hired to (i) substitute another employee who has a right to reserve a job. (ii) cover for the reduced working hours of an employee who has reduced his/her working hours in accordance with law or the CBA and (iii) cover a vacancy during a recruitment or promotion process, which in all cases will be subject to the duration established in the Statute of Workers. Upon expiry, the employee is not entitled to a severance payment unless the CBA states otherwise.

**(iii)** Training contracts. These contracts have two modalities:

**(a)** Training contracts for work experience according to level of studies. The aim of this contract is to provide training to young people that have obtained an academic or professional degree within the previous three years. Unless the applicable CBA establishes different limitations, it has a minimum term of six months and a maximum term of one year.

**(b)** Contract for on-the-job-training. This contract is intended to offer young people the opportunity to work while studying. This contract can only be used to hire individuals aged 30 or under and is subject to specific limitations. Under a learning contract, a significant portion of the work time must be dedicated to training. The contract's general term varies from three months to two years.

Upon expiry of these contracts, the employee is not entitled to a severance payment unless the CBA establishes otherwise.

## 6.8.3 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 with back pay 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 unless the employee began providing services before 2012 in which case a more beneficial formula for the employee must be applied.

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.

## 6.8.4 Social security

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

A company must always register employees with the Social Security before they start rendering services. 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 2023: (i) the rate for common hazards is 28.30% (23.60% corresponding to the company and 4.70% to the employee); (ii) the rate for labour accidents and occupational illnesses ranges between 1,50% and 7.15%, depending on the company's activity and the employee's occupation (which must be borne by the company solely); (iii) the rate for unemployment contributions for permanent employment contracts is 7.05% (5.50% corresponding to the company and 1.55% to the employee); (iv) the rate for the Salary Guarantee Fund (*Fondo de Garantía Salarial*) is 0.20% (which must be borne exclusively by the company);(iv) the rate for professional training is 0.70% (0.60% corresponding to the company and 0.10% to the employee); and (v) the rate for intergenerational equity is 0.60% (with the company being responsible for 0.50% and the employee 0.10%).

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 one month (e.g., annual bonus).

These contribution bases are limited each year by maximum and minimum amounts. For 2023, the monthly minimum contribution base is € 1,166.70 per month, while the maximum contribution base is € 4,495.50 per month.

CUSHMAN & WAKEFIELD

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