

Practical Guide to Real Estate Investment

- Portugal
- Angola
- Mozambique

About PLMJ International Legal Network

PLMJ has built a sound network of partnerships in Portuguese-speaking countries and in the principal target markets for Portuguese investments that enables it to provide legal advice without borders.

PLMJ International Legal Network brings together leading firms from each country, with a deep respect for local professional ethics rules and shared high service standards that our clients know they can depend on.

This is a network of contacts and cooperation between law firms created to make the most of resources and synergies, and enable us to respond to all our clients' needs.

Premium Legal Services

International Network of Firms

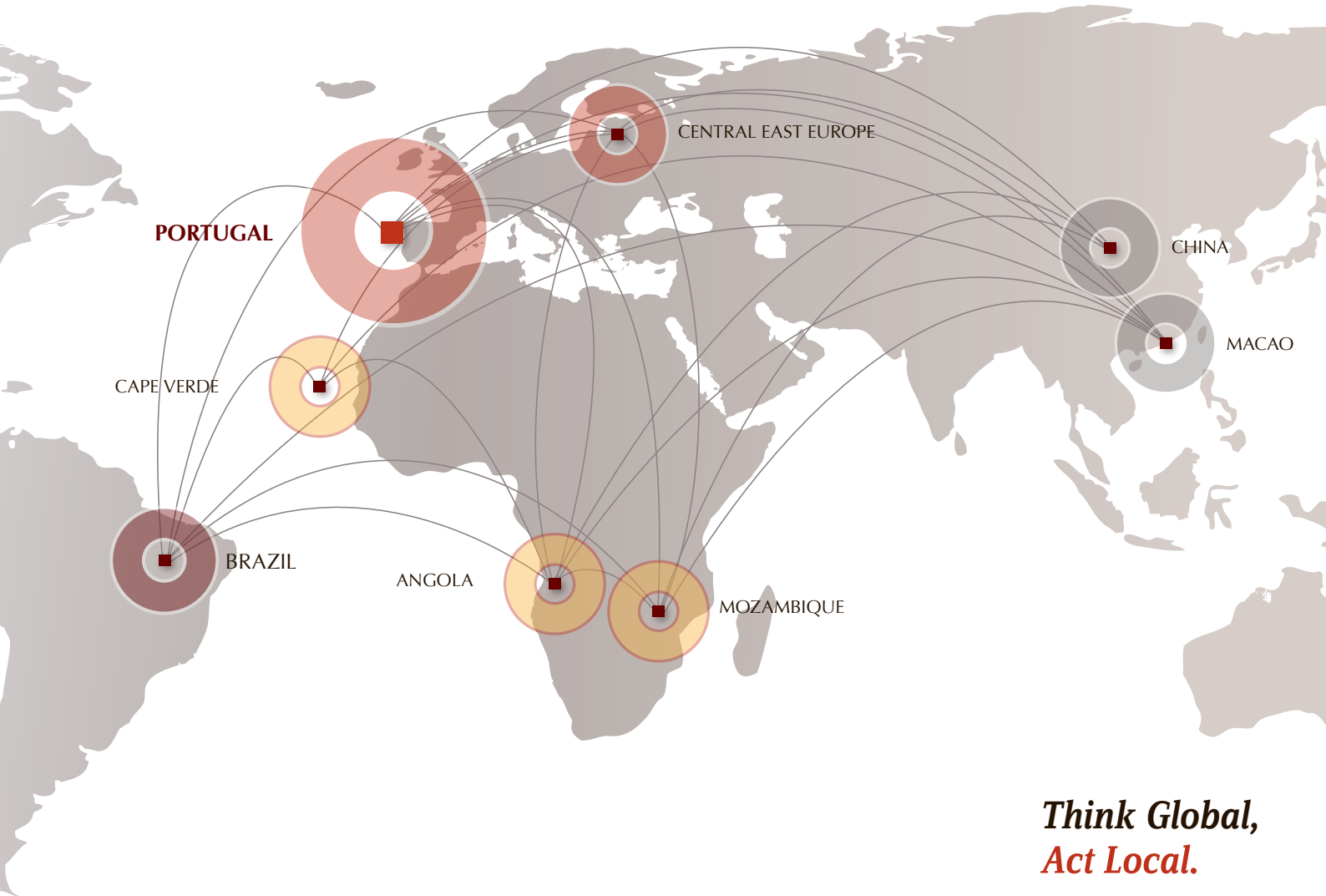
Cost Efficiency

Knowledge of the Local Markets

Know-How & Specialisation

Focus on the Client





*Think Global,
Act Local.*





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Practical Guide to Real Estate Investment in Portugal

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INTERNATIONAL
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“PLMJ is a true partner in life and in business. You can trust their teams to help you along in solving whatever problems come your way.”

Client reference from Chambers and Partners, 2008

Full-Service

24/7 Access

Pioneering and Innovative

Know-How & Expertise

National Coverage

International Legal Network

Focus on Portuguese-Speaking Countries

About PLMJ

PLMJ is the leading law firm in Portugal and is known for its dedication to its clients, its dynamism, its capacity for innovation and the quality of its services.

It is a full-service firm with high ethical standards and international merit that is focused on adding value to its clients' activities by providing specialised, high-quality legal services.

 **200**

Lawyers

PLMJ is made up of several generations of lawyers whose distinction lies in their creative potential, their extensive knowledge and broad vision of the challenges of the profession, of business and of the markets their clients operate in.

7

Countries

Using the synergies created by a common language and culture PLMJ has built a solid network of partnerships in Portuguese-speaking countries Angola, Mozambique, Brazil, Macau and Cape Verde, and in the principal markets for Portuguese investment such as the countries Central and Eastern Europe and China.

45

Years of Experience

More than 45 years of experience have enabled PLMJ to build a team that is unparalleled in the market. The firm has become a reference for the excellence of its legal services and has played a role in the country's most important legal cases.

A policy of internationalisation and investment in the specialisation of its lawyers has made it possible for PLMJ to adapt to the changing times with agility and focus.

Why Portugal...

With good weather all year-round, a long Atlantic coast, a vast network of motorways with strategic access to a range of markets, competitive operational costs, proactive reforms, and flexible, hard-working and skilled human resources, Portugal is a first class destination for investment.

With all these assets, over recent years Portugal has established itself as a great location to invest in, to do business and to live.



Lisbon, Portugal

Real Estate Investment in Portugal

I. Buying real estate

The process for buying real estate assets (“property”) located in Portugal is very simple and can be done very quickly. The transaction generally involves two stages as described below.

1.1. Research into the legal status of the property

It is crucial to obtain any necessary information and carry out any relevant searches to ascertain the legal status of the property before making any purchase. This means that:

- Any person who wants to create or acquire any right over a property must **obtain up to date certificates from the Land Registry and the Property Tax Registry** containing, respectively, the description and all the entries in force or pending on the register for the property and the identification of the property at the Tax Authority. These documents have special importance, because the result of any transfer of rights or creation of charges over a property do not take full legal effect until they have been registered definitively in favour of the person that acquired the right or against the person subject to the charge;
- For the creation or acquisition of rights over a **piece of land**, the person acquiring the rights must also **check any planning issues, restrictions and licences with the local municipal authorities, and must also check any other regulations that may apply to the use of the land;**
- For the creation or acquisition of rights over a **buildings or units in a building**, the person acquiring the rights must also bear in mind the content of **(i) the use licence that defines the purpose for which the property in question can be used** and, in certain cases of residential property, **(ii) the Technical Data Sheet for Residential Property** (*Ficha Técnica de Habitação*), a document describing the technical and functional characteristics of the property;

The process for buying real estate assets (“property”) located in Portugal is very simple and can be done very quickly.

- For **residential** properties or **offices**, the **Energy Performance Certificate** (describing the property's energy efficiency and consumption expected from normal use and any measures to improve performance) must be provided on the date of acquisition of the property.

1.2. Promissory Sale and Purchase Contract

In Portugal, the acquisition or creation of property rights begins, as a general rule, with a promissory contract which must include recognition of the parties in the form of their signatures and certification of the existence of the respective use or construction licence. The promissory contract governs:

- **The deadline for completion (closing) of the sale and purchase or other promissory contract:** this may vary depending on whether or not there is a need for the parties to comply with any specific conditions prior to completion (obtaining permits or licences, obtaining financing, etc.);
- **Price and conditions of payment:** it is common for there to be a deposit of between 10% and 30 % of the price, which, besides being an advance on the price, also acts as a guarantee of performance by the buyer and as compensation for the seller in the event of a breach of contract (see below);

- **Rights of first refusal:** depending on the location or historic and architectural relevance, properties may be subject to rights to first refusal to be exercised, among others, by the municipal council where the property is located or by the Institute for Management of Architectural and Archaeological Heritage. In this case, prior to the transaction, they must be given notice of the term and conditions of the transaction. In the case of properties that are rented out, the tenant may also have a right of first refusal;

- **Declarations and Guarantees:** it is common for the parties to include in the promissory contract certain declarations and guarantees as to the state of the property, as to the absence of any legal actions, debts, liabilities or tax charges. The violation of, or inaccuracy in, any such declarations or guarantees requires party at fault to pay compensation;

- **Breach:** any breach is normally subject to specific performance meaning the non-defaulting party may obtain a court order to put into effect the legally agreed intention of the party at fault (in certain cases). Alternatively, breach may give rise to rights to terminate the contract and receive compensation based on the amount of the deposit. If the buyer breaches the contract, the seller may keep the deposit and if the seller breaches the contract, the buyer may terminate the contract and receive double the amount of the deposit.

The parties may provide for additional penalties for cases where the losses exceed the amount of the deposit or specific penalties for specific breaches (penalty clauses).

- **Miscellaneous provisions:** to reduce the most frequent contractual risks, it is common to include various provisions to defend the positions or interests of the parties such as conditions precedent and conditions subsequent, retention of title clauses, restriction clauses, etc.

A promissory contract does not transfer title to the property or take effect against third parties. However, the parties may **attribute full legal effect to the promise to transfer or to create rights over property** by means of an express declaration in the contract and registration at the Land Registry. If they do this, the obligations between the parties to the contract also take effect against third parties. This option strengthens the position of the buyer as it limits the possibilities for the seller to breach the contract.

The promissory buyer may also ask for provisional registration of the purchase prior to completion (closing). This registration is subsequently made definitive.

1.3. Completion (Closing)

The promissory contract is followed by the signing of the public deed or authenticated private document (the definitive contract – completion/closing). This is the moment at which ownership of the property in question (or some other property right) is transferred. This must then be registered in favour of the buyer.

1.4. Taxation of real estate investments

When buying property, the investor must bear in mind the charges associated with the acquisition and ownership property, in particular, those of Municipal Tax on Sales of Real Property - *Imposto Municipal sobre as Transmissões Onerosas* (“**IMT**”), Stamp Duty (“**SD**”) and Municipal Property Tax - *Imposto Municipal sobre Imóveis* (“**IMI**”):

- **IMT** is charged on transfers for value of property rights and the rate for commercial property is 6.5%. For residential property a progressive rate is charged on the value appearing in the contract (or on the official value for taxation purposes (*valor patrimonial tributário*) of the property, if higher). There is a single rate of 6% for transactions above EUR 574 323 or EUR 550 836, depending on whether or not, respectively, the property is for use as the buyer’s personal and permanent residence. If the buyer has their tax residence in certain countries with a more preferable taxation regime this may give rise to the application of a higher rate;
- **IMI** is payable by whoever is the registered owner of the property as at 31 December of year to which the tax relates. The IMI rate varies between 0.3% and 0.5% of the official value for taxation purposes for urban properties (according to their location) and is 0.8% for rural. properties;

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- **SD** is charged at 0.8% of the value of the transaction and is added to the value that serves as the basis of assessment for the IMT.

SD is also charged at the rate of 1% on the ownership of, or the right to use or enjoy, urban buildings with an official value for taxation purposes equal to or greater than EUR 1 million.

On the completion (closing) date, the buyer must present proof of payment of the IMT and the SD, having paid them in advance at the tax office.

II. Rules on renting urban property

Rent agreements may be for **residential** purposes and these agreements may be for a fixed or an indefinite term, or **for non-residential purposes**, in which case urban building or parts of them may only be rented out if **the use contemplated in the agreement complies with the use licence**.

Fixed term residential rent agreements may not be made for periods longer than 30 years and, except where there is a provision to the contrary, they renew automatically for successive periods of equal duration.

In fixed term residential rent agreements **the only option for landlords is to oppose their renewal** which they do by giving notice determined in accordance with the period of the agreement or any renewal period in effect. However, in addition

to opposing renewal **tenants may terminate the agreement at any time** after 1/3 of the period of the agreement or any renewal period in effect has passed. They do so by giving notice determined by reference to the date on which the termination will take effect.

Residential rent agreements for indefinite periods may be **terminated at any time by either party** after they have been in force for at least 6 months. This is done by giving notice determined by reference to the date on which the termination will take effect. This notice period varies depending on whether it is given by the landlord or by the tenant.

The rules on duration, termination and opposition to renewal of **non-residential rent agreements** are **freely established by the parties**.

III. Real estate investment funds

Real estate investment funds (“REIF”) – in Portuguese *fundos de investimento imobiliários* – are independent funds that belong, under the special joint property regime, to the majority of the members and their shares are represented by fund units.

Variations in capital - REIFs may be (i) Open Funds made up of a variable number of fund units in accordance with market demand, (ii) Closed Funds made up of a fixed number of fund units set at the moment of issue but which may later be increased or reduced in accordance with applicable legislation and the fund rules. In closed funds, subscription may be public or private; or (iii) Mixed Funds made up of two categories of fund units, one of a fixed number and the other of a variable number.

Form of remuneration - There are two forms: (i) Distribution Funds which distribute the income generated to the members in full or in part on a regular basis, or (ii) Capitalisation Funds which automatically reinvest the income generated by the respective portfolios and do not distribute income.

Finally, there are also special real estate investment funds, which may be open or closed. The difference lies in the fact that they are destined for “specific segments of investors defined in the fund rules” and

Depending on the type of REIF, the acquisition and ownership of property by the fund may benefit from certain IMT, IMI and stamp duty exemptions.

that it is possible for them to include mixed-use and rural property, simple rights to operate a property as a business and derivative financial instruments.

The legal framework for Portuguese REIFs, specifically in respect of creation and sale of their fund units, is supervised by the Securities Market Commission which is responsible for authorising the creation of REIFs and ensuring compliance with the rules imposed by law and any applicable regulations, without prejudice to the powers of the Bank Portugal in respect of supervision of credit institutions and financial companies.

Depending on the type of REIF, the acquisition and ownership of property by the fund may benefit from certain IMT, IMI and stamp duty exemptions.

IV. Special scheme for issuing residence permits

This special scheme makes it possible to obtain a **temporary residence permit** without the need to first obtain as residence visa. In order to benefit from the scheme, a foreign national must **buy real estate of a value equal to or greater than EUR 500 000⁽¹⁾** in Portugal, either personally or through a company.

The applicant must prove full ownership of the property and that it is **free of any burdens or charges** by presenting the respective up to date certificate(s) from the Land Registry.

The applicant for the temporary residence permit must prove that he or she is **owner of the property** (which the applicant may purchase as a joint owner as long as each one of the joint owners invests at least EUR 500 000) **or be the promissory purchaser of the property**, as long as the deposit paid by the applicant as part payment of the purchase price is at least EUR 500 000. The requirements for such proof are presentation of the respective up to date certificate(s) from the Land Registry, as well as the purchase deed or the promissory contract. These documents must also include a declaration issued by a financial institution operating in Portugal confirming the actual transfer of the capital for that purpose (definitive purchase or payment of deposit). In cases in which a promissory sale and purchase is used as the basis for the temporary residence permit application, the respective definitive contract (purchase deed) must be presented prior to the application for renewal.

It should be noted that any property acquired for the purpose of obtaining a temporary residence permit **may be mortgaged or charged on any value exceeding EUR 500 000**, and may also be **rented out and exploited for commercial, agricultural or tourism purposes**.

The investment chosen by the applicant for the residence permit must be made prior to presentation of the application for the residence permit and must be **maintained for a minimum period of 5 years** from the date issue of the residence permit.

The temporary residence permit is **valid for the period of 1 year** from the date of its issue and **may be renewed for successive periods of 2 years** as long as the conditions necessary for it to be issued remain in place.

Holders of Portuguese residence permits **may move about freely within the Schengen area** (Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland).

(1) Investments that lead to the transfer of capital in an amount equal to or greater than EUR 1 million or to the creation of at least 10 jobs also qualify for this special scheme for issuing residence permits.

V. Tax rules for non-habitual residents

By means of an application that is subject to approval by the tax authorities, foreign nationals who wish to transfer their tax residence to Portugal may benefit from the scheme for non-habitual residents as long as they have not been taxed as tax residents in Portugal in any of the preceding 5 years. Under this scheme they acquire the right to be taxed as non-habitual residents for a period of 10 consecutive years, at the end of which they will be taxed in accordance with the general rules of the personal income tax (IRS) code.

There are certain situations in which a non-habitual resident may acquire residence in Portugal for tax purposes. These include: (i) when the taxable person has remained in the country for 183 days, whether or not consecutive, or (ii) the taxable person has remained for a shorter period of time but, as at 31 December of the year in question, has a residence in Portugal in circumstances that make it possible to assume that the taxable person intends to maintain and occupy it as their habitual residence.

VI. Double taxation agreements

Without prejudice to the above, it should also be noted that Portugal has entered into a number of Double Taxation Agreements with a various States⁽²⁾ and their provisions should be taken into consideration when investing in Portugal. This is because the taxation of income from operations between entities resident in Portugal and entities resident the various contracting States may be reduced or even eliminated under the terms of the respective agreement.

It should also be noted that Portugal has entered into a number of Double Taxation Agreements and their provisions should be taken into consideration.

(2) To see a list of the Double Taxation Agreements to which Portugal is a party visit <http://info.portaldasfinancas.gov.pt/>.

Awards and Recognitions of PLMJ's Real Estate Team

Chambers Europe

Real Estate

Recommended Tier 1

European Legal 500

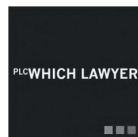
Real Estate and Construction

Recommended Tier 1

PLC - Which Lawyer?

Real Estate

Leading Firm



PLMJ

Awards and Recognitions

Best Portuguese Law Firm of the Year

Chambers European Awards for Excellence / 2009, 2012

Shortlisted / 2010, 2011

Iberian Law Firm of the Year

The Lawyer European Awards / 2012

Shortlisted / 2010, 2011, 2012

6th Most Innovative Law Firm in Continental Europe

Financial Times - Innovative Lawyers Awards / 2011, 2012



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About GLA - Gabinete Legal Angola



GLA – Gabinete Legal Angola is a law firm that brings together a group of leading Angolan legal professionals who share a firm interest and great satisfaction in working in Angola for Angola in strict compliance with the professional and ethical rules of the Angolan Bar Association.

GLA's team is made up of a number of lawyers with different areas of specialisation and levels of seniority who have professional and academic experience gained in Angola and other countries, which gives them an international perspective on their work.

The lawyers at GLA have an unparalleled capacity to provide advice in a wide range of legal areas and economic sectors. This means GLA can provide the best response to its clients while working in accordance with the highest ethical and professional standards.

The professionals of GLA are the exclusive members of PLMJ International Legal Network for Angola and they carry on their professional activities in Angola in close international cooperation with PLMJ, in particular, with the lawyers specialising in Angolan law who work at the PLMJ Africa desk. This makes it possible for GLA to provide first class legal services in Angola in accordance with the highest international standards.

Why Angola...

With one of the fastest growing economies in the world, Angola is positioned to become an active member of the global economic community. With its privileged geographic location on the coast of the Atlantic Ocean, its abundant natural and human resources and its economic development policies centred on private investment, Angola is perfectly placed to provide interested investors with financial incentives that increase potential for return on capital.

These characteristics mean Angola is an excellent place to invest.



Luanda bay, Angola

Real Estate Investment in Angola

I. Acquisition of property in Angola

The process for acquiring property in Angola is lengthy and complex. In fact, the Angolan rules on ownership of land and related rights provide that land is «original property» of the State.

This means that ownership is highly regulated and subject to a series of restrictions which principally depend on the type of land in question. The three types of land that exist under Angolan law are: (i) land in the public domain of the State, (ii) land in the private domain of the State and (iii) privately owned land.

(i) **Land in the public domain of the State** is owned by the State and may not be sold or let. However, concession rights may be granted to private entities in specific cases.

(ii) **Land in the private domain of the State** is also owned by the State and includes all land that is not the public domain or in private ownership. This includes urban and rural land, although the transfer of ownership in rural land is prohibited.

(iii) **Private ownership of land** by legal entities or private individuals only occurs in two cases: a) if the land was validly acquired prior to Angolan

independence, as long as such land has not been subject to compulsory purchase or confiscation and b) the land is urban land included in the private domain of the State acquired by Angolan citizens under the Land Law (*Lei das Terras*).

In Angola it is more usual to acquire a surface right, which is a property right but one that is more limited than actual ownership. However, it is widely used in Angola. The surface right consists of the ability to construct or maintain a building or project on land owned by another person, either perpetually or temporarily, or to create or maintain plantations on that land. Surface rights allow their holder to do the same things they would be able to do if they were the owner of the land, but with a few exceptions, the most relevant of which is the time limit. The maximum duration for a surface right under the Land Law is 60 years, after which the right comes to an end.

***The process for acquiring
property in Angola is lengthy
and complex.***

1.1. Researching property

It is crucial to pay special attention to the property documentation before entering into any contract. In the first place, the chain of title to a right over property must be carefully checked before entering into any contract relating to property.

This evaluation should be done by obtaining and analysing the following documents:

- **An up-to-date land certificate** (*certidão predial*) issued by the Land Registry in which the name of the seller appears as the current owner of the property;
- **Property record or certificate of the content of the register** issued no more than one year ago by the tax authorities, proving who is the current beneficiary of the income from the property;
- **Document proving the lawful acquisition** of the right by the transferor (public deed, order of release from confiscation, etc.);
- **Property location plan**, preferably certified by the competent administrative authority.

In the case of acquisition of a piece of land, the person acquiring the land must also check the urban development plans and any other regulations relating to the use of the land. In order to do this, it is necessary to request specific information from the appropriate municipal authorities and from the Provincial Government Urban Management Services.

1.2. Description of these steps in a typical transaction

In Angola the acquisition of property begins, as a rule, with a **promissory sale and purchase contract**. It is by means of this contract that the parties undertake to enter into a definitive acquisition contract at a later date. This promissory sale and purchase contract must cover all the main conditions of the transaction and a deposit is normally paid at this point in the transaction.

The existence of the **deposit** and the amount agreed depends on the negotiations that take place between the parties. However, it is common to pay a deposit of between 10 and 50% of the acquisition price. The deposit represents an advance on the acquisition price but it is also a guarantee of performance for the promissory buyer and, in the majority of cases, it represents the value of the compensation in the event of breach.

The **promissory contract is followed by the signing of the public deed** on a pre-established date. It is at this moment that ownership of the property in question is transferred. Sometimes further deposit payments are made between the signing of the promissory contract and the signing of the definitive contract (public deed).

As a rule, the **price must be paid in full** upon signing the public deed. On occasions, although less frequent, the parties agreed that part of the payment of the price will be made at a date after the signing of the public deed.

The promissory buyer may apply for the provisional registration of the acquisition prior to signing the definitive contract. After the definitive contract is signed this registration will be made definitive.

1.3. Typical provisions and conditions for conclusion of transactions

It is often necessary to establish a specific period of time between the promissory sale and purchase contract and the signing of the public deed in order to make it possible for the parties to comply with certain conditions that must be met prior to the signing of the contract in question (obtaining official urban plans, authorisations or licences, as well as obtaining financing, etc.)

The parties may give full legal effect to the promissory contract for the transfer or creation of rights over property (in order for the obligations between the parties to take effect against third parties as well). To do this the parties must make the promissory contract by public deed and then register it. This option strengthens the position of the buyer in particular, as it limits the possibilities for the seller to breach the contract, for example, by selling the property to a third party.

The promissory buyer may apply for the provisional registration of the acquisition prior to signing the definitive contract.

To reduce the most frequent contractual risks it is common to include a range of provisions aimed at protecting the parties against losses and damage resulting from breach of contract. These provisions may include: **penalty clauses, performance guarantees, conditions subsequent, conditions precedent and retention of title clauses.**

1.4. Formalities for the acquisition of property

The contract for sale and purchase of property is only valid if made by public deed. Security in the legal sale and purchase of real estate comes from publishing the legal situation of the property through the land registry.

The location of the property determines which Land Registry has jurisdiction over it. This Land Registry will have jurisdiction to issue the respective certificates of land registration for the property and, for this purpose, it is essential that the details registered at the land registry and tax registry correspond.

1.5. Taxation of real estate investments

Purchase tax (*Sisa*) is charged on the transfer for value of real estate located in Angola. A simple promise to sell accompanied by the handing over of the property or confirmation that the promissory buyer is using the property will give rise to property tax. The buyer is responsible for payment of this tax.

In general, the basis of assessment is the acquisition price of the property or, if greater, 30 times the value established at the tax registry or the result of the valuation that determined it. In the case of a transfer of land for construction there must always be a valuation. The rate of property tax is 2%.

The transfer of property for value is also, in general, subject to **Stamp Duty** at the rate of 0.3%, charged on the Value of the Transaction.

II. Legal rules on renting urban property

In tenancy agreements it is possible to agree that the property is destined for **residential, commercial or industrial use or for carrying on a liberal profession or for any other lawful purpose**.

Depending on the intended use of the property, the relevant provisions of the Rent Law (Lei do Inquilinato), if any, will apply as will any other legislative provisions that do not contradict it. It should also be noted that, if the contract in question does not determine the purpose or purposes for which the property is to be used, the tenant may only use it for residential purposes.

When there is no written contract or the contract is silent, the default period for residential lettings is six months, except in the case of residential lettings for short periods at beaches, spas or other resorts or in the case of properties inhabited by the landlord and rented for a period corresponding to the temporary absence of the landlord up to a maximum of one year. There is an overall maximum limit of **30 years** and, if provision is made for a longer period or for a perpetual contract, the tenancy agreement will be deemed to be reduced to that limit.

III. Taxation of rental property

Urban property tax (*Imposto Predial Urbano - "IPU"*) is charged on income from properties that are rented out and on merely holding when the property is not rented out. This means that, in the case of properties that are rented out, the basis for assessment is the value of the rent, while in cases of properties that are not rented out, the basis of assessment corresponds to the official value for taxation purposes of the property.

On the questions of **who must pay the tax**, IPU is payable by whoever has the right to the income from the property while, in the case of merely holding the property, it is payable by the owner, user or holder of the surface right of the property.

The **basis of assessment for rented urban property** corresponds to the value of rents actually received in each year and expenses related to the property up to 40% of the said value may be deducted. In turn, the **basis of assessment for properties not rented out**, corresponds to the official value for taxation purposes of the respect of property and this corresponds to the value that results from the valuation done in accordance with the rules applicable to valuation and re-valuation of urban properties, or to the value for which the property was sold, whichever is the higher.

On the questions of who must pay the tax, IPU is payable by whoever has the right to the income from the property while, in the case of merely holding the property, it is payable by the owner, user or holder of the surface right of the property.

Rates: the rate of IPU you for property that is rented out is 25%. Merely holding such property is exempt from tax if the official value for taxation purposes of the property does not exceed AOA 5 000 000 (five million kwanza, or approximately USD 50 000). In cases in which the official value for taxation purposes exceeds that amount, holding of the property will be subject to a rate of 0.5%.

IV. Investment in Angola

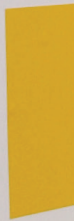
The Private Investment Law (Lei do Investimento Privado - Law 20/11 of 20 May - “LIP”) is the law that governs investment in Angola. A foreign investor is deemed to be any non-resident individual or legal entity that, regardless of their nationality, introduces capital that is domiciled abroad to Angola or uses it there, with the right to transfer profits and dividends outside the country.

In this context, the minimum value applicable to investment projects is legally set at USD 1 000 000 (one million United States dollars).

The National Agency for Private Investment (ANIP – Agência Nacional do Investimento Privado) is responsible for authorisation procedures and this means it is an important partner to anyone who is interested in investing in Angola in most sectors of economic activity.

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Practical Guide to Real Estate Investment in Mozambique

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About GLM - Gabinete Legal Moçambique



GLM – Gabinete Legal Moçambique is a law firm that brings together a group of leading Mozambican legal professionals who share a firm interest and great satisfaction in working in Mozambique for Mozambique in strict compliance with the professional and ethical rules of the Mozambican Bar Association.

GLM's team is made up of a number of lawyers with different areas of specialisation and levels of seniority who have professional and academic experience gained in Angola and other countries that give them an international perspective on their work.

The lawyers at GLM have an unmatched capacity to provide advice on a wide range of legal areas and economic sectors. This means GLM can provide the best response to its clients while working in accordance with the highest ethical and professional standards.

GLM provides legal support to a number of international and Mozambican companies and groups both in their activities in Mozambique and in their internationalisation operations outside Mozambique. This support focuses on international investment operations in Mozambique and/or on international operations by Mozambican companies abroad.

In this context, particularly in projects of an international dimension or involving high level technical specialisation, the professionals of GLM have the unparalleled advantage of the technical knowledge combined with in-depth practical knowledge of the situation on the ground in Mozambique.

In addition to this, whenever the size and/or structure of the project justify it, the lawyers of GLM are able to work together with the lawyers who make up PLMJ International Legal Network, of which GLM is a proud member.

Why Mozambique ...

Mozambique is a country with abundant natural resources that include hydroelectricity, natural gas reserves, coal and minerals (gold, precious stones, titanium and bauxite among others). The country also boasts more than 2500 km of coastline with huge fishery resources which were Mozambique's main source of exports until the development of the aluminium industry.

These characteristics mean Mozambique is an excellent place to invest.



Maputo bay, Mozambique

Real Estate Investment in Mozambique

I. Rights to use and benefit from land

Land in Mozambique is the property of the State and, for this reason, cannot be sold, mortgaged or charged. Besides occupation, the only vehicles the law provides for access to land are the right to use and benefit from land (Direito de Uso e Aproveitamento da Terra - "DUAT") or Special Licences. The latter are only granted for certain economic activities in areas in the public domain (with partial or full protection). The DUAT is granted outside areas in the public domain to domestic and foreign individuals and companies, taking into account the social or economic objective of the land use.

The law defines foreign companies as any company or other institution incorporated under Mozambican or foreign legislation in which more than 50% of the share capital is held by foreign citizens, companies or institutions.

Foreign individuals or companies may hold DUAT rights as long as they have a duly approved investment and comply with the following conditions: if they are individuals, they must have been resident in Mozambique for at least five years; if they are companies, as long as they were incorporated or are registered in Mozambique.

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The establishment, modification, transfer or extinction of DUAT rights are subject to registration at the local and national land registries and definitive authorisation is granted for a period of 50 years renewable for equal periods once the provisional authorisation period has been observed or the plan for operation of the land or the application of any interested party has been complied with.

II. Acquisition of property

Without prejudice to the limits imposed by the Land Law (Lei das Terras) the acquisition of property by private persons is also possible. The process for buying real estate assets (“property”) located in Mozambique is very simple and can be done very quickly. The transaction generally involves the following stages:

1.1. Research into the legal status of the property

It is essential to look into the legal status of the property before deciding to buy. Any person who wants to create or acquire any right over a property (including independent units in a building) must **obtain up to date certificates from the land registry and the property tax registry** containing, respectively, the description and all the entries in force or pending on the register for the property and the identification of the property at the local tax office. These documents have special importance because the result of any transfer of rights or creation of charges over a property do not take full legal effect until they have been registered definitively in favour of the person that acquired the right or against the person subject to the charge.

1.2. Promissory sale and purchase contract

In Mozambique, the acquisition or creation of property rights begins, as a general rule, with a promissory contract which must include recognition of the parties in the form of their personal signatures and certification of the payment of stamp duty. If the parties so wish, the contract may be made by public deed before a notary in order to give it full legal effect (see below). The promissory contract governs:

- **The deadline for completion (closing) (of the sale and purchase or other promissory contract):** this may vary depending on whether or not there is a need for the parties to comply with any specific conditions prior to completion (obtaining permits or licences, obtaining financing, etc.);
- **Price and conditions of payment:** it is common for there to be a deposit of between 10% and 30 % of the price which, besides being an advance on the price, also acts as a guarantee of performance by the buyer and as compensation for the seller in the event of a breach of contract (see below);

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- **Preference rights:** In the case of properties that are rented out, the tenant may have a right of preference. In this case, prior to the transaction, they must be given notice of the terms and conditions of the transaction to the tenant;
 - **Declarations and Guarantees:** it is common for the parties to include certain declarations and guarantees as to the state of the property, as to the absence of any legal actions, debts, liabilities or tax charges in the promissory contract. The violation of, or inaccuracy in, any such declarations or guarantees requires party at fault to pay compensation;
 - **Breach:** any breach is normally subject to specific performance. This means that the non-defaulting party may obtain a court order to put into effect the legally agreed intention of the party at fault (in certain cases). Alternatively, breach may give rise to rights to terminate the contract and receive compensation based on the amount of the deposit. That is (i) if the buyer breaches the contract, the seller may keep the deposit and if (ii) the seller breaches the contract, the buyer may terminate the contract and receive double the amount of the deposit.

The parties may provide for additional penalties for cases in which the losses exceed the amount of the deposit. They may also provide for specific penalties for specific breaches (penalty clauses).

- **Miscellaneous provisions:** to reduce the most frequent contractual risks, it is common to include various provisions to defend the positions or interests of the parties such as conditions precedent and conditions subsequent, retention of title clauses, restriction clauses, etc.

The parties may **attribute full legal effect to the promise to transfer or to create rights over property** by means of an express declaration in the contract and registration at the land registry. If they do this, the obligations between the parties to the contract also take effect against third parties. This option strengthens the position of the buyer as it limits the possibilities for the seller to breach the contract.

The promissory buyer may also ask for provisional registration of the purchase prior to completion (closing). This registration is subsequently made definitive.

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1.3. Completion (Closing)

The promissory contract is followed by the signing of the public deed (the definitive contract – completion/closing). This is the moment at which ownership of the property in question (or some other property right) is transferred. This must then be registered in favour of the buyer.

1.4. Taxation of real estate investments

When buying property, the investor must bear in mind the charges associated with the acquisition and ownership property, in particular, those of the tax on transfers for value of property (*Imposto sobre as Transmissões Onerosas* - “**SISA**”), stamp duty (*Imposto do Selo* - “**IS**”) and municipal property tax (*Imposto Predial Autárquico* - “**IPRA**”), besides the registration fees for the property:

- **SISA** is charged on transfers for value of property rights at the rate of 2% on the value appearing in the contract. Public service associations are exempt from SISA when they acquire property to be used to carry on their activity.

- **IPRA** is charged on the official value for taxation purposes (valor patrimonial) of urban properties located in the respective municipality. This tax is payable by the owner of the property right as at 31 December of the year of assessment. Badly constructed or temporary homes, among others, are exempt from this tax when occupied by their owners. The rate to be applied varies between 0.5% of the official value for taxation purposes for land for construction, 0.7% on the official value for taxation purposes of residential property and 1% of the official value for taxation purposes for property used for commercial or industrial activity or for independent professional activities. The tax is paid in two instalments, the first between 3 and 31 January and the second between 1 and 30 June;

- **IS** is charged on documents, contracts, books, papers and other designated acts. In this case, it is payable by the buyer in a transfer for value or gift of a property right or figures similar to this right over property. It corresponds to 0.2% of the value of the transaction.

On the completion (closing) date, the buyer must present proof of payment of the SISA and the IS in advance at the tax office.

III. Urban renting

Rent agreements may be for **residential** purposes, in which case the agreement may be for a fixed term, or **for non-residential purposes** (commercial or industrial or for liberal professions), in which case urban building or parts of them may only be rented out **if the use contemplated in the agreement complies with the use licence.**

Residential rent agreements may not be made for a period of more than 30 years and, except when there is a provision to the contrary, they renew automatically for successive periods of equal duration. The parties may terminate the agreement (by giving notice determined in accordance with the period of the agreement or any renewal period in effect).

The rules on duration, termination and opposition to renewal of **non-residential rent agreements** are **freely established by the parties.**

Residential rent agreements may not be made for a period of more than 30 years and, except when there is a provision to the contrary, they renew automatically for successive periods of equal duration.

IV. Taxation of rental property

The tax rules applicable to **rent agreements** currently in force in Mozambique contain specific provisions in accordance with the type of rent agreement in question and the location of the property. The factors to be taken into account are: (i) whether the rental is for commercial or residential purposes; (ii) whether the property is located in an urban or a rural zone; or (iii) whether the landlord and tenant are a legal entity and an individual, respectively, and vice versa, or are both individuals, or are both legal entities. Rent payments are subject to the following taxes:

- **Value added tax (VAT)** – renting property is treated as the “provision of services” and is subject to VAT at the rate of 17%. Property rented for residential purposes or in rural zones is exempt. The VAT is payable by the tenant to the landlord who must then pay the VAT to the appropriate tax office by the 30th day of the month following the one to which the VAT relates;

- **Corporate income tax (*Imposto sobre o Rendimento das Pessoas Colectivas - ISPC*)** – the payment of rent by a legal entity (tenant) to another legal entity (landlord) is subject to withholding tax at the rate of 20%. However, if the landlord is a company with the corporate object of managing its own properties, it is not required to apply the withholding tax;

- **Personal income tax (*Imposto Sobre o Rendimento das Pessoas Singulares - IRPS*)** – the payment of rent by a legal entity (tenant) to an individual (landlord) is subject to withholding tax at the rate of 20% and the tenant may deduct 30% from the withholding tax rate, which means that a final rate of 14% will apply to the net value of the rent due. The amount withheld must be paid to the tax office by the 20th day of the month following the one to which it relates. The annual rate of personal income tax varies between 10% and 32%.

Stamp duty corresponding to the rate of 2% on the value of the highest rent agreed between the parties for one month is payable upon signing the rental agreement.

V. System of investment incentives

Foreign and Mozambican companies or individuals that wish to invest in Mozambique through one of the various forms of investment allowed - with the investment from their own capital or assets and equipment, rights, shareholder loans or other loans, among others - may apply for the various incentives that exist. These incentives are aimed at projects in areas as diverse as industry, services, tourism, transport, and areas reserved to the public sector such as electrical energy production, water supply and postal and communication services, etc.

Activities carried on in the area of wholesale and retail are, however, excluded from investment benefits, except when they are carried on in new infrastructures. It should also be noted that these activities may, however, benefit from the guarantee of export of profits and re-export of invested capital. Other areas such as prospection, exploration and production of oil, gas, and extractive industries for mineral resources, agriculture and fisheries, commerce and industry in rural zones, hotel and tourism activity, rapid investment zones, free industrial zones, science and technology parks and telecommunications are subject to specific terms and conditions appearing in special legislation relating to each one of these areas of investment.

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The system of incentives to invest in Mozambique features four major components which are: **(i)** tax incentives; **(ii)** customs incentives; **(iii)** incentives related to the repatriation of invested capital and profits; and **(iv)** the guarantee of security and protection from the Mozambican State for investments and private property.

To go ahead with a Proposal for Foreign Investment (Proposta de Investimento Estrangeiro), it is important to define in advance the amount of the investment planned for the project. The minimum value of direct foreign investments with own capital by foreign investors for the specific purposes of the transfer profits out of the country and re-exportable invested capital is MZN 2 500 000 (approximately USD 85 000).

Foreign investors will also be eligible for incentives if they meet one of the following requirements:

- Annual turnover of not less than MZN 7 500 000 (USD 255 000) from the third year of activity;
- Annual exports (goods or services) of a minimum of MZN 1 500 000 (USD 50 000);
- Creation and maintenance of direct employment for at least 25 Mozambican workers, registered in the social security system from the second year of activity.

The investment project/investment contract implies the prior existence or incorporation of a company in Mozambique to operate from that country. These companies are known as project implementing companies (*Empresa Implementadora do Projecto*), or the existence of a subsidiary, branch or agency of foreign institution that operates from Mozambique.

To benefit from the incentives, the companies or individuals must present a Proposal for Foreign Investment which will have to be approved by the Mozambican State, represented by the Centre for Promotion of Investments (CPI), in the form of an Investment Project.

After the investment proposal is presented, and once the respective project has been evaluated, it may be approved or rejected. Rejection will occur

in the case of missing documents, information or other items relating to the proposed investment or to the investors themselves (documents, information or any items previously requested from the proposers by the CPI prior to taking the decision to reject the application), or because they have not met all the conditions provided for in the applicable legislation.

The implementation of the project must begin within 120 days of the date of notification of the approval to the investors. If this does not happen, any approval that has been granted may be revoked because the 'payback' for the incentive is actually making the investment proposed and achieving the objectives set out in the investment project.

The tax benefits that may be granted include the tax credit for investment, accelerated depreciation and amortisation, costs arising from modernisation and the introduction of new technologies and professional training and any other expenses deemed to be tax costs, exemption from stamp duty and a reduction in the rate of property transfer tax.

It should also be noted that certain sectors of activity, projects and geographical areas benefit from specific incentives, as is the case of agriculture (which benefits from a substantial reduction in the rate of income tax), hotel and tourism activity, mining activity, oil activity, rapid development zones and free industrial zones and, finally, large-scale projects (those with a value that exceeds USD 500 million).

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