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## CENTRAL AND EASTERN EUROPE DESK

### EDITORIAL

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### Portugal

**"Portuguese Law Firm of the Year"**

*Chambers Europe Awards for Excellence 2009  
& IFLR Awards 2006 & Who's Who legal Awards  
2006, 2008*

**"Best Portuguese Law Firm for Client  
Service"**

*Client Choice - International Law Office, 2008*

**"Best Portuguese Tax Firm"**

*International Tax Review - Tax Awards  
2006, 2008*

### Poland

**"Polish National Law Firm of the Year"**

*Chambers Europe Awards for Excellence 2008*



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## DOING BUSINESS IN PORTUGAL AND POLAND II

### Real Estate



The basis of real estate rights in Portugal is of Roman law origin and the system is, consequently, that of civil law. Property ownership as well as other rights "in rem" are governed by the Civil Code and the right to own property constitutes a fundamental right of the citizens foreseen in the Portuguese Constitution.

#### 1. Rights "in rem" ("direitos reais")

Rights "in rem" ("direitos reais") are absolute rights attached to real estate property, which are opposable "erga omnes", that is, they are enforceable against third parties (and not only to the counterparty) and are subject to a "numerus clausus", i.e. only the following categories pre-established in the law are allowed and the parties cannot create additional ones:

a) Absolute Ownership ("Direito de Propriedade") - The amplest of these rights as it grants the owner the universality of powers that can be attached to the property.

b) Joint ownership ("Compropriedade") - Two or more persons can hold property in common, with an undivided interest. In case one of the co owners wishes to sell his share, the others have the pre-emption right to buy it. Except for this, each co owner may freely encumber and dispose of his share (but not of a specific part of the property).

### Real Estate



Real estate is defined in Polish law as land, buildings on plots of land and premises (apartments, office space, etc.). Real estate can be used in the following legal forms:

- ownership;
- perpetual usufruct, where the land is owned by the Treasury or a municipality; the usufructuary gains ownership rights to the buildings on a given plot of land and the right to use the land for a period of 40-99 years in return for an annual charge; he/she may also sell the right or use it to secure loans;
- usufruct;
- lease or rental.

A perpetual usufruct is a right specific to Polish civil law relating to land. It involves land owned by either the Treasury or a local government authority being given over for use for a maximum period of 99 years. The perpetual usufructuary gains ownership rights to the buildings on a given plot of land and has to pay an annual charge of 1% (land under residential buildings, utility infrastructure) or 3% (other land) of the value of the land.

Real estate (perpetual usufruct) purchase contracts must be made in the form of a notarial deed drawn up by a Polish notary, otherwise they will be deemed null and void.

The legal status of real estate is disclosed in