

PANORAMIC

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Portugal



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FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

What is the general state of fintech innovation in your jurisdiction?

The Portuguese fintech market is rapidly evolving. We have seen different trends of international fintech entities exploring the Portuguese market:

- acquisition of regulated entities (instead of applying for local licences) mostly by non-EU fintech entities with a view to revolutionising the business models of the Portuguese targets;
- establishment of branches of EU fintech entities in Portugal, creation of tech hubs in Portugal and strong marketing campaigns related to the offering of new products and services in Portugal, either by the branches or on a cross-border basis; and
- establishment of joint ventures between fintech entities and incumbent financial entities with a view to offering innovative products leveraging the regulatory and financial background of the incumbent entities.

Incumbent financial entities are promoting and investing in innovative tech solutions for the provision of financial services, not only for the provision of the service itself (eg, robo-advisory or digital lending solutions) but also incorporating digital regtech solutions to facilitate compliance with regulatory and anti-money laundering and counter-terrorism financing requirements.

In the blockchain and Web3 spaces, Portugal is a major hub for innovation with founders and investors creating a vibrant crypto environment in Portugal, leveraged by visa programmes and favourable tax regimes for foreigners. The Bank of Portugal has issued a handful of licences for virtual asset service providers, and other incumbent financial entities and brokers are integrating crypto as part of their commercial offering, not only through custodial wallets but also by way of incorporating cryptoassets in traditional products, such as derivatives, structured deposits or funds.

Law stated - 13 August 2024

Government and regulatory support

Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

Portuguese regulators have shown an increasing interest in the innovation on the financial sector. The Portugal FinLab initiative, which is organised by the three Portuguese regulatory authorities in the financial sector (the Bank of Portugal, the Portuguese Securities Market Commission and the Portuguese Insurance and Pension Funds Supervisory Authority), is a communication channel between new players in the market or incumbent institutions with innovative tech-based financial projects or products and the Portuguese regulatory authorities. These new players can take advantage of this channel to obtain guidelines from regulators and adjust their business plans in light of the regulatory requirements or to enhance their regulatory efficiency.

Portuguese regulators are increasingly cooperative in regulatory proceedings with fintech entities of tech-based financial innovation, thus moving away from the typical conservative approach of regulators.

Law stated - 13 August 2024

FINANCIAL REGULATION

Regulatory bodies

Which bodies regulate the provision of fintech products and services?

The Bank of Portugal for banking products (eg, deposit taking, lending or payment services), the Portuguese Securities Market Commission (CMVM) for financial intermediation products and services (eg, brokerage activities, investment advice or production and marketing of complex financial products), and the Portuguese Insurance and Pension Funds Supervisory Authority for insurance, insurance distribution and insurtech products.

Law stated - 13 August 2024

Regulated activities

Which activities trigger a licensing requirement in your jurisdiction?

Activities listed in MiFID II Directive (2014/65/EU) and the CRD4 are all regulated activities triggering licensing requirements in Portugal. In particular, and unlike other EU jurisdictions, all forms of corporate lending in Portugal trigger licensing requirements.

Law stated - 13 August 2024

Consumer lending

Is consumer lending regulated in your jurisdiction?

Consumer lending is subject to extensive regulation in Portugal, not only through the implementation of the Consumer Credit Directive (Directive 2008/48/EC, now repealed by Directive 2023/2225/EU, which is still in the transposition period) but also regulations on requirements relating to information, product governance and the protection of consumers in a situation of financial distress.

Law stated - 13 August 2024

Secondary market loan trading

Are there restrictions on trading loans in the secondary market in your jurisdiction?

The Bank of Portugal has been of the view that acquisition of performing loans in the secondary market is still a regulated activity triggering lending licensing requirements. The

Portuguese market has developed alternative structures used to obtain similar economic effects, based on, for example, securitisation structures or synthetic transfers.

Law stated - 13 August 2024

Collective investment schemes

Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

Some fintech activities are captured by the regulatory regime for collective investment schemes, in particular crowdfunding platforms, which are subject to prior authorisation from the CMVM.

The relatively recent [Asset Management Framework 2023](#) (RGA) introduces several changes to the regulatory framework for collective investment undertakings (CIUs) in Portugal, but fintech projects in Portugal have fallen outside the scope of this regime.

Law stated - 13 August 2024

Alternative investment funds

Are managers of alternative investment funds regulated?

The Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD) has been implemented in Portugal; however, fintech companies and tech-based products and services in the financial sector usually fall outside the scope of this regulation.

Law stated - 13 August 2024

Peer-to-peer and marketplace lending

Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

In 2015, [the Crowdfunding Act](#) (regulated for the first time crowdlending platforms, creating a specific legal framework for internet-based platforms that intermediate lenders and borrowers, thus allowing such activity to be carried out by more lightly regulated entities, which are authorised and supervised by the CMVM.

Depending on each business plan, the intermediation of peer-to-peer and marketplace lending may also trigger licensing requirements related to payment service activities. Thus, some interesting and successful projects of peer-to-peer or marketplace lending in Portugal involve two entities (whether within the same group or not): a licensed crowdfunding platform and a payment service provider.

Law stated - 13 August 2024

Crowdfunding

Describe any specific regulation of crowdfunding in your jurisdiction.

The Portuguese Crowdfunding Act provides for several types of crowdfunding:

- donation-based, which may not involve a financial compensation;
- reward-based, where the investor as compensation receives a right to a specific product or service subject to investment;
- loan-based, where compensation is based on typical interests; and
- investment-based.

Crowdfunding platforms are authorised and supervised by the CMVM. The regime has tacitly meant that such activities are not considered professional credit lending by the platform operator. The Crowdfunding Act places significant constraints on the amount of financing that can be obtained through a crowdlending platform (eg, only projects up to €1 million per offer within the past 12 months, or up to €5 million if the offer is directed only at certain qualified investors), as well on the investments that can be made by retail individual investors (eg, up to €3,000 per offer and up to €10,000 per year, with certain exemptions).

Law stated - 13 August 2024

Invoice trading

Describe any specific regulation of invoice trading in your jurisdiction.

Invoice trading could be deemed as a credit-granting activity by Portuguese regulators, depending on the effects of each transaction, but it is not subject to any particular regulation, apart from the general lending regulations. True sale of trade receivables could fall outside of the licensing requirements applicable to lending.

Law stated - 13 August 2024

Payment services

Are payment services regulated in your jurisdiction?

Payment services as defined in the Payment Services Directive (Directive (EU) 2015/2366) (PSD2) are regulated in Portugal and subject to licensing requirements. The Portuguese Payment Services Regime closely follows the PSD2 on the definition of payment services.

Law stated - 13 August 2024

Open banking

Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

Open banking requirements are essentially based on PSD2 and its implementation in Portugal.

In Portugal, payment processor SIBS has developed the SIBS API Market, which is an integrated platform giving access to other APIs in the financial sector. Nevertheless, some non-bank players in the payment sector are still reporting difficulties in achieving a true open banking environment in the Portuguese payments market.

As at the time of writing, no licences for Portuguese account information service providers (AISPs) or payment initiation service providers (PISPs) have been granted by the Bank of Portugal. This is a clear limitation in the Portuguese payment market, which is affecting open banking maturity in the jurisdiction.

Law stated - 13 August 2024

Robo-advice

Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

There are currently no specific regulations or guidelines concerning robo-advice in Portugal, but the CMVM has already issued concerns and market consultation papers ahead of advancing to specific regulation. The CMVM recognises the benefits of robo-advice and the potential promotion of more financial inclusion and reduction of intermediation costs. In any case, the use of robo-advisers should not affect the information duties of the financial intermediaries or liabilities in respect of the content of the advice.

Law stated - 13 August 2024

Insurance products

Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

Regulation will apply to the extent the activity of such fintech companies could be qualified as insurance distribution, which is subject to licensing requirements as insurance mediator. There are some exemptions in Portuguese insurance distribution law that could apply to certain business models, but generally, selling and marketing activities would in principle trigger licensing requirements.

Law stated - 13 August 2024

Credit references

Are there any restrictions on providing credit references or credit information services in your jurisdiction?

Credit information services could be limited by Portuguese strict bank secrecy rules, so the sharing of credit information by regulated entities must be based on an authorisation granted by the client, which can be included in the relevant terms and conditions.

Credit referencing related to origination of consumer credit agreements or mortgage lending to consumers is also a regulated activity subject to authorisation by the Bank of Portugal as credit intermediary. Credit references in relation to corporate clients should not be captured by licensing requirements or specific regulation.

Law stated - 13 August 2024

CROSS-BORDER REGULATION

Passporting

Can regulated activities be passported into your jurisdiction?

Yes, regulated activities can be passported into Portugal based on the applicable EU regulatory framework, either by providing regulated services on a cross-border basis or by exercising the right to establish a branch in Portugal. These passporting rights could be exercised inter alia by credit institutions, financial intermediaries, fund managers, payment service providers, electronic money institutions, insurance companies or insurance distributors.

Law stated - 13 August 2024

Requirement for a local presence

Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

This would not be possible since obtaining a local licence in Portugal would require compliance with substance requirements, which are not compatible with a locally licensed entity not having any physical presence in Portugal.

Law stated - 13 August 2024

SALES AND MARKETING

Restrictions

What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

The sale and marketing of financial services and products are regulated activities in the Portuguese jurisdiction triggering licensing requirements as a financial intermediary.

Law stated - 13 August 2024

CRYPTOASSETS AND TOKENS

Distributed ledger technology

Are there rules or regulations governing the use of distributed ledger technology or blockchains?

The use of distributed ledger technology (DLT), such as blockchain technology, is regulated in Portugal when such use translates into an activity that is regulated under the Portuguese and European legislation, such as an activity involving cryptoassets or financial instruments (some cryptoassets will qualify as financial instruments in the Portuguese jurisdiction, despite being issued or traded through DLT).

In relation to cryptoassets that are not classified as financial instruments, entities carrying out activities relating to their issuance, trading, exchange, transfer and custody or administration with local presence in Portugal will need to comply with the anti-money laundering legislation ([Law No. 83/2017 of 18 August](#)) and will be subject to prior registration with the Portuguese banking authority (the Bank of Portugal) for carrying out these activities. As of 30 June 2024, the rules included in Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 (the MiCA Regulation) will directly apply to entities offering or admitting to trading certain types of cryptoassets (asset-referenced tokens and e-money tokens) in Portugal. The remaining rules included in the MiCA Regulation (notably, the rules applicable to the issuance of cryptoassets that are not asset-referenced tokens and e-money tokens and cryptoasset service providers) will apply from 30 December 2024, which will substantially increase the level of regulation applicable to the use of DLT. It should be noted however that the MiCA Regulation’s scope of application contains an important exclusion in what related to decentralised protocols where a controlling entity cannot be identified, since it will not apply to cryptoasset services provided ‘in a fully decentralised manner’ (Recital 22 of the MiCA Regulation).

As for cryptoassets qualifying as financial instruments, the European pilot regime for market infrastructures based on DLT (the DLT Pilot Regime) will apply. This provides the legal framework for the trading and settlement of transactions in cryptoassets that qualify as financial instruments. [Decree-Law 66/2023 of 8 August](#) implemented in the Portuguese jurisdiction the rules established in the DLT Pilot Regime in respect of the use of DLT to issue, trade and settle financial instruments, notably in the context of the issuance of debt instruments up to €1 billion.

Law stated - 13 August 2024

Cryptoassets

Are there rules or regulations governing the promotion or use of cryptoassets, including digital currencies, stablecoins, utility tokens and non-fungible tokens (NFTs)?

Under the Portuguese jurisdiction, the use of cryptoassets will not be regulated provided such use does not fall under a regulated activity under the anti-money laundering legislation or the MiCA Regulation (in relation to asset-referenced tokens and e-money tokens). The promotion of cryptoassets is regulated if such cryptoassets qualify as financial instruments

(in which case the rules applicable to financial services will apply) or as asset-referenced tokens or e-money tokens (in which case the rules established under the MiCA Regulation will apply).

Law stated - 13 August 2024

Token issuance

Are there rules or regulations governing the issuance of tokens, including security token offerings (STOs), initial coin offerings (ICOs) and other token generation events?

The rules governing the issuance of tokens applicable in Portugal will differ according to the type of token issued. For tokens that qualify as financial instruments, their issuance (STOs) will be governed by Portuguese financial services legislation, namely, the rules applicable to public security offerings.

For tokens that qualify as e-money tokens or asset-referenced tokens under the MiCA Regulation (cryptoassets that stabilise their value by referencing, respectively, one official fiat currency or any other type of asset or a combination of assets), the rules established under the MiCA Regulation apply as of 30 June 2024, with the issuing entities being subject to authorisation by the competent supervisory authority and to the approval by such authority of their white paper.

As for any other tokens, provided their issuance does not involve services relating to the exchange of such tokens for other tokens or for fiat currency, or transfer or custody services relating to such tokens (as these services will require prior registration with the Bank of Portugal for anti-money laundering purposes), such issuance will not be regulated in the Portuguese jurisdiction. From 30 December 2024, the rules established under the MiCA Regulation for the issuance of tokens other than asset-referenced tokens and e-money tokens will apply, with the issuing entities being required to notify the corresponding white paper to the competent supervisory authority.

Law stated - 13 August 2024

ARTIFICIAL INTELLIGENCE

Artificial intelligence

Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

Portugal has approved the Charter of Human Rights in the Digital Era, which includes guidelines for using AI and robots, emphasising the importance of respecting fundamental rights in the development and deployment of these technologies. The use of AI and robots must adhere to principles of explainability, security, transparency and accountability. Algorithmic decisions must be communicated clearly, be subject to appeal and be auditable. The use of robots must follow principles of beneficence, non-maleficence and respect for human autonomy, aligning with the values of the Treaty on the European Union, such as non-discrimination and tolerance.

The national AI strategy includes the adoption of measures for high-risk AI applications, particularly in sensitive areas like health data and employment.

Under the Labour Code, employers are already obliged to inform employees about algorithms or AI systems that affect decision-making regarding job access and retention and working conditions, including profiling and monitoring of professional activity.

Once finalised, the Artificial Intelligence Act will apply directly in Portugal. High-risk AI systems, such as those used in creditworthiness assessments within financial institutions, will be particularly affected. Financial institutions are expected to implement robust AI governance frameworks and develop comprehensive AI strategies. These strategies should ensure that AI systems are explainable, free from bias, and effectively monitored to manage and mitigate potential risks.

Law stated - 13 August 2024

CHANGE OF CONTROL

Notification and consent

Describe any rules relating to notification or consent requirements if a regulated business changes control.

Acquisition of regulated entities, or acquisition of qualified holdings in regulated entities, is typically subject to prior authorisation by the relevant banking, financial intermediation or insurance regulator. The relevant threshold is generally 10 per cent of shares or voting rights in the target regulated entity. Prior notifications to regulators are required and extensive information on the proposed acquiror (and its managers, shareholders and UBOs) or on the proposed changes to the target entity must be submitted to the regulators in this notification.

Law stated - 13 August 2024

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Yes. Under Portuguese law, entities with a physical presence in Portugal that carry out activities with virtual assets are subject to prior registration with the Portuguese banking authority (the Bank of Portugal) for the purposes of complying with national legislation on anti-money laundering and counter-terrorism financing (Law No. 83/2017 of 18 August).

The activities that trigger the obligation to obtain a prior registration with the Bank of Portugal are as follows:

- exchange services between virtual currencies and fiat currencies;
- exchange services between one or more virtual assets;
- virtual asset transfer services; and
- virtual asset custody or administration services, or both.

The Bank of Portugal requests that entities, in the process of obtaining this registration, provide a draft of the internal policy they intend to implement for anti-money laundering and counter-terrorism financing with a detailed description of the procedures to be implemented in this regard (including the know-your-customer and know-your-transaction procedures applying to their clients and to the transactions carried out by them, and reporting obligations with regard to suspicious activities).

The obligation to obtain prior registration with the Bank of Portugal only arises for fintech companies incorporated in Portugal. Foreign fintech entities can provide activities related to cryptoassets on a cross-border basis under the reverse solicitation exemption.

Law stated - 13 August 2024

Guidance

Is there regulatory or industry anti-financial crime guidance for fintech companies?

There are no specific guidelines or other soft law instruments issued by regulatory authorities providing guidance to fintech companies or facilitating compliance with anti-money laundering rules to tech-based financial products, apart from specific regulatory instruments, for example, those establishing rules for the use of digital solutions to meet know-your-customer requirements.

Law stated - 13 August 2024

DATA PROTECTION AND CYBERSECURITY

Data protection

What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

In Portugal, the processing and transfer of data, including data related to fintech products and services, are primarily governed by the General Data Protection Regulation (GDPR) and complemented by national data protection law, such as the National Data Protection Act.

Key aspects of the GDPR include lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity, confidentiality and accountability. The GDPR contains specific provisions for international transfers. With these provisions, the GDPR aims to guarantee a level of protection for personal data being transferred equivalent to the one enjoyed within the EEA.

Under the GDPR, anonymised data is no longer considered personal data if rendered anonymous in such a manner that the data subject is not or is no longer identifiable. However, the process of anonymisation itself is a data processing activity and must comply with GDPR rules. This ensures that the anonymisation process adheres to principles such as lawfulness, fairness and transparency.

Law stated - 13 August 2024

Cybersecurity

What cybersecurity regulations or standards apply to fintech businesses?

[Law No. 46/2018 of 13 August](#) (the Portuguese Cybersecurity Law) establishes the legal framework for cybersecurity in Portugal, transposing the NIS 1 Directive. This Directive concerns measures for a high common level of security of network and information systems across the European Union and applies to fintech businesses, among others, ensuring they adhere to stringent cybersecurity standards.

The Portuguese Cybersecurity Law is set for an update to align with the NIS 2 Directive, introducing stricter requirements and a broader scope. This update will place new obligations on the banking and financial sectors, including enhanced security measures, risk management and business continuity plans, new incident reporting procedures, and increased enforcement by the National Cybersecurity Centre, with higher penalties for non-compliance.

Many fintech companies in Portugal adopt the ISO/IEC 27001 standard for information security management systems, reflecting their commitment to cybersecurity best practices and compliance with international standards.

The Digital Operational Resilience Act (DORA) is a legislative measure that applies to financial organisations operating within the EU, covering 20 categories of financial activities and ICT third-party service providers. This regulation ensures that these organisations maintain robust operational resilience and can effectively manage ICT-related risks to safeguard the financial system.

These impending changes will require fintech businesses in Portugal to review and update their cybersecurity policies and procedures to meet the new legal requirements, thereby enhancing their resilience against cyber threats and protecting sensitive financial data.

Law stated - 13 August 2024

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

Portuguese regulators follow closely the outsourcing guidelines issued by the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA), which establish several requirements and obligations in connection to the outsourcing of critical or important functions by financial entities.

The Bank of Portugal recently also published regulations establishing requirements for financial entities subject to its supervision to keep an updated registry of outsourcing arrangements and communicate to the Bank of Portugal on the intention to outsource critical functions or in relation to any change or any serious events related to existing outsourcing arrangements.

Law stated - 13 August 2024

Cloud computing

Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

Portuguese regulators follow closely the cloud outsourcing and cloud computing guidelines issued by the EBA and ESMA. In particular, the Bank of Portugal has formally confirmed that financial entities subject to its supervision must follow the EBA Recommendations on outsourcing to cloud service providers (EBA-Rec-2017-03).

Outsourcing arrangements regarding the use of cloud computing are also subject to subject to the communication and reporting requirements set forth by the Bank of Portugal.

Law stated - 13 August 2024

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

Which intellectual property rights are available to protect software, and how do you obtain those rights?

Software is mainly protected under [Decree-Law No. 252/94](#), which affords computer programs a protection analogous to that of literary works under copyright law.

Under the terms of the industrial property law, software per se cannot be subject to patent protection. However, patent protection may be granted to software that exhibits a technical effect. The European Patent Office has held that computer software can be patented (1) when the software affects the execution of processes that take place outside the software or the computerised system; or (2) when the software leads the computer or hardware to operate in a new manner.

The source code of a piece of software may also be protected under the trade secrets rules provided that the necessary requirements are met.

Law stated - 13 August 2024

IP developed by employees and contractors

Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

In relation to industrial property rights, notably patents and designs, statutory provisions generally state that, when in connection with the company's business activity, the rights shall vest in the employer. However, the inventor may be entitled to remuneration, in accordance with the importance of the invention. These principles also apply, with the necessary adaptations, to inventions made by order (by contractors or consultants).

As to copyright in general, the Copyright and Related Rights Code states that, unless stipulated otherwise, the ownership of copyright belongs to its intellectual creator. In cases where the copyright belongs to the employer, the employee may claim an additional remuneration for its creative activity, under specific circumstances. This also applies to consultants or contractors.

With regard to software, Portuguese statutory provisions mention that, unless stipulated otherwise, the intellectual property rights over software created by an employee in the context of the employment relationship will belong to the employer. This also applies to computer programs made to order.

Law stated - 13 August 2024

Joint ownership

Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

Joint ownership over intellectual property rights follows the general framework of the co-ownership regime under the [Portuguese Civil Code](#). In the absence of any agreement, the shares of the co-owners over the intellectual property right are presumed to be equal.

With regard to use, in the absence of an agreement on the use of the common property, any of the owners may use it, provided that they do not use it for a purpose other than that for which it was intended and do not deprive the other joint owners of the use to which they are also entitled.

As to other rights such as licensing, in the absence of an agreement regulating the performance of such acts, any of the co-owners shall have equal power to perform such acts. However, a co-owner may oppose an act performed by another co-owner, with the decision on such act being subject to the majority of the votes.

As to the assignment of intellectual property rights, a unanimous decision is required.

Law stated - 13 August 2024

Trade secrets

How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

The [Portuguese Industrial Property Code](#) provides that trade secrets are protected and that information will be considered a trade secret if it meets the following requirements:

- it is secret, in that it is not generally known or easily accessible to persons in the circles that normally deal with this type of information;
- it has commercial value by virtue of being secret; and
- it is subject to reasonable diligence to keep it secret.

Confidentiality of trade secrets is preserved in court proceedings. Protection measures may be taken after a duly substantiated request by one of the parties or at the initiative of the court, and include:

- limiting access to documents containing trade secrets or alleged trade secrets that have been submitted by the parties or third parties, in whole or in part, to a restricted number of people;
- restricting access to hearings, their recordings and transcripts to a limited number of people, where there is a possibility of disclosure of trade secrets or alleged trade secrets; and
- making available to people not included in the restricted number referred to in the preceding paragraphs a non-confidential version of the judicial decision from which passages containing trade secrets have been removed or concealed.

Confidential information may also be subject to protective measures under the Portuguese Civil Code.

Law stated - 13 August 2024

Branding

What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

In Portugal, branding may be protected under registered industrial property rights, such as trademarks, logotypes or even designs. These rights are subject to registration, which shall be carried out before the National Industrial Property Office.

Branding may also be protected under the copyright regime, provided that the brands are qualified works under the Copyright and Related Rights Code.

To avoid infringing existing brands, fintech businesses may carry out availability searches (conducted by legal professionals) in order to evaluate whether there are any prior registered rights effective in the Portuguese territory that may be considered confusingly similar with the signs for which registration is sought.

Law stated - 13 August 2024

Remedies for infringement of IP

What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Civil and criminal remedies are available.

There are two main types of civil proceedings relating to intellectual property rights in general that may be filed before the Intellectual Property Court: preliminary injunctions and main actions. Although preliminary injunctions are functionally dependent on a main action, both

types of proceedings can be brought in parallel over the same subject matter and may run separately from each other.

In general terms, civil remedies include preliminary and permanent injunctions, conferring on the rightsholder the right to prevent any imminent infringement or to prohibit the continuation of the infringements of that right, with the possibility of requesting the court to order the infringer to pay a periodic penalty for breach of the judgment, and to order the destruction, recall or definitive removal from the channels of commerce of the infringing goods.

Damages claims for infringement are also allowed in the case of negligent or wilful infringement.

In determining the amount of compensation for damages, the court shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, that the injured party has suffered, any unfair profits made by the infringer, and the costs borne with the protection of the right in question and the investigation and termination of the harmful conduct.

Patent infringement, trademark counterfeiting and imitation, registered design infringement and copyright infringement are also considered criminal offences.

Customs actions or administrative proceedings are also available.

Law stated - 13 August 2024

COMPETITION

Sector-specific issues

Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

The Portuguese Competition Authority (PCA) has shown a keen interest in barriers to entry and expansion for innovative financial service providers. In 2018, the PCA published the issue paper '[Technological Innovation and Competition in the Financial Sector in Portugal](#)', which included recommendations to remove barriers to entry and expansion of new fintech companies in Portugal and promote innovation, diversity and competition in payment services. One main objective was to ensure non-discriminatory access for fintech firms to essential inputs such as banking infrastructure and account data.

Since then, the PCA has monitored the financial sector closely. In 2020, the PCA conducted a survey of fintech companies, including both those active in Portugal and potential entrants from outside the country. In light of the findings of this survey, the PCA launched an ex officio investigation into SIBS Group, the entity responsible for the Portuguese domestic payment scheme. SIBS Group was fined €13,869,000 for abusing its dominant position in the payment services sector by conditioning access to the Portuguese payment schemes on the obligation to also contract its processing services. This decision is subject to an appeal, which will be decided by the Portuguese Competition Court.

Law stated - 13 August 2024

TAX

Incentives

Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

Portugal does not have any tax incentives that are available specifically to fintech companies and investors in the fintech sector. However, the following three benefits may be applicable:

- Incentives for acquiring shares in start-up companies: gains arising from share options, share subscription or share allocation plans or equivalent rights attributed by SMEs (including small–mid caps), by entities operating in R&D or by companies recognised as start-ups and realised by employees, will be taxed at 50 per cent of their value and will be subject to the special rate of 28 per cent for personal income tax (ie, an effective rate of 14 per cent will apply).
- Tax Incentives for Research and Industrial Development (SIFIDE II) – applicable to a company's carrying out of R&D activities, which corresponds to a tax credit of 32.5 per cent of expenses incurred in a given fiscal year; and 50 per cent of the increase in expenses incurred in a given fiscal year in relation to the average expenses incurred in the previous two years, up to a limit of €1,500,000.
- Investment Support Regime (RFAI) – allows a percentage of investment in fixed assets (tangible and intangible) to be deducted from taxable income for companies carrying out IT and related activities and scientific R&D, as well as exemption from or reduction of property taxes.

Law stated - 13 August 2024

Increased tax burden

Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

To date, there are no tax laws, proposals or guidelines that would increase the tax or administrative costs for fintech companies in Portugal.

Law stated - 13 August 2024

IMMIGRATION

Sector-specific schemes

What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

There are visa programmes for highly qualified workers. This applies to citizens who are hired by companies with an annual salary of at least 1.5 times the national average gross annual salary or three times the social support index value (IAS), carrying out an activity belonging to

major groups 1 and 2 of the International Standard Classification (ISCO), and who may also carry out a regulated (high professional qualifications) or unregulated profession, provided they hold high professional qualifications appropriate to the activity or sector specified in the employment contract or promise of employment contract.

This type of residence usually starts at the embassy or consulate where the applicant resides, where they apply for a national residence visa for highly qualified workers. Once the visa is issued or stamped on the passport, the applicant can travel to Portugal and start working. Within the following months, the applicant will have an appointment at the Immigration Office in Portugal to submit their application and have biometrics taken. Within a couple of months following this appointment, a temporary residence card will be issued (valid for two years, renewable every two years).

Law stated - 13 August 2024

UPDATE AND TRENDS

Current developments

Are there any other current developments or emerging trends to note?

The creation of tech hubs and regulated branches of EU fintechs in Portugal is an increasing trend in the Portuguese market, together with non-EU fintech companies acquiring local regulated entities in Portugal and entering into joint ventures with incumbents or startup financial entities. Portuguese consumers have a well-deserved reputation of being early adopters, which encourages non-Portuguese fintechs to consider expanding their business to Portugal, so we believe that this trend will continue and that it will continuously pose new challenges to the incumbent financial entities, particularly with regard to payments and lending.

Blockchain and Web3 projects are also evolving in the Portuguese market, with such projects increasingly obtaining investment from venture capital investors dedicated to this space. While traditional venture capital firms have not typically made early-stage investments, we anticipate that this approach will change as we see the first successful Portuguese Web3 projects.

Law stated - 13 August 2024