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Guide on Access to Law and Justice: Citizens

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Guide on Access to Law and Justice
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INTRODUCTION

This guide is designed to be a practical aid for nationals who want to know more about the institutions and procedures associated with the law and the administration of justice and for foreign citizens who wish to reside or have activity in Portuguese territory. The aim is to provide, in one single instrument, general and relatively simplified information on access to law and justice.

In addition to information on the requirements of the residence permit itself and the criteria for obtaining nationality, other topics with particular practical relevance are addressed, such as the purchase and sale of property and the lease, or the rules concerning the various types of employment contracts, namely the specificities of entering into an employment contract with a foreign or stateless worker. On the other hand, issues concerning contracting and consumers rights are addressed.

From a very practical point of view, but at the same time aggregating the essential information for the adoption of informed decisions, the themes of marriage and divorce, of under aged children and of death and testament are also addressed. Following, the theme of registries is briefly explored as a way of publicizing the established law situations.

It also includes a chapter that seeks to enlighten citizens on what to do if they are a victim of a crime.

Finally, the Portuguese justice system is addressed, focusing both on the judicial system and on the alternative dispute resolution, and on how to benefit from legal aid provided by public services, should the need arise.

With this guide, the Directorate-General for Justice Policy (DGPJ) of the Ministry of Justice, which also has the mission to promote the access to law and justice, seeks to offer a concise and updated aid in a structural area for informed and responsible citizenship. Any suggestions that could improve this work will of course be very welcome.
The information and legal references contained in this Guide have been compiled with the utmost accuracy and timeliness at the time of its preparation. However, consultation of the legislation in force, which may be accessed through the “Diário da República” (Portuguese Official Journal) (www.dre.pt) should not be dispensed with. It does not intended to replace the legal advice provided by a lawyer or solicitor.
1. TO RESIDE IN PORTUGAL

In order to reside in Portugal you may need to observe a set of rules and procedures.

According to Law 37/2006 of 9 August, citizens of the European Union and citizens of States parties to the European Economic Area and Switzerland have the right to reside on national territory for up to three months without further conditions and formalities in addition to holding a valid identity card or passport. This also applies to family members who, holding a valid passport, accompany or congregate with the EU national.

Nationals of States which are not members of the European Union or party to the Convention implementing the Schengen Agreement must obtain a residence permit. The diploma that defines the procedures and conditions necessary for obtaining residence in Portuguese territory, in these cases, is Law No. 23/2007 of 4 July, which approved the legal regime of entry, stay, departure and removal of foreigners from the national territory.

1.1. Residence visa

Obtaining residence in Portuguese territory may depend on prior approval of a residence visa.

The residence visa is intended to allow its holder to enter Portuguese territory, in order to apply for a residence permit, enabling him/her to remain in the country for a period of four months.

An application for a residence visa shall be submitted by the applicant in the country of his habitual residence or in the country of the consular jurisdiction of the State of his/her residence; this visa is issued by the consular posts and the consular sections after obtaining the compulsory prior opinion of the Immigration and Borders Service (SEF).

The decision on the application for a residence visa, which must be issued within 60 days, takes account of the intended purpose of the residence permit.

The purposes which may determine the granting of a residence visa may be:
• exercise of subordinate professional activity;

• exercise of independent professional activity or for entrepreneurial immigrants;

• highly qualified or cultural teaching activity;

• highly qualified activity performed by a subordinate worker;

• research, study, exchange of high school students, internship and volunteering.

Once a residence permit has been obtained, an application for a residence permit may be submitted.

A special visa may be granted to non European students that want to study in Portugal.

A residence permit may exceptionally be granted without a residence visa.

1.2. Residence permit

An application for a residence permit may be made by the person concerned or his/her legal representative and submitted to the SEF. This application may be extended to minors dependent on the applicant.

The applicant for a residence permit can apply simultaneously for family reunification.

The residence permit replaces, for all legal purposes, the identification document.

Brazilian citizens with a valid residence permit may also apply for a Citizen Card, as provided for in the Porto Seguro Treaty.

The application for a residence permit must be decided within 90 days.

The residence permit may be:

a) temporary - is intended to assess the interest and the integrative capacity of the authorization holder. It is granted for a period of five years. Once this period has elapsed and the legal requirements have been established, a permanent residence permit is then issued;

b) permanent - once issued, the permanent residence permit has no validity limit.
The general conditions for granting temporary residence permit are:

a) possession of valid residence visa;

b) absence of any fact which, if known to the competent authorities, would prevent the granting of a visa;

c) presence in Portuguese territory;

d) to have means of subsistence;

e) to have accommodation;

f) social Security enrolment, whenever applicable;

g) absence of conviction for a crime that in Portugal is punishable by deprivation of liberty of more than one year’s duration;

h) not being in the period of interdiction of entry into national territory, following a removal order from the country;

i) no indication in the Schengen Information System;

j) no indication in the SEF Integrated Information System for non-admission.

The renewal of the temporary residence permit must be requested within 30 days before its expiration and depends on the demonstration that the applicant has:

a) means of subsistence;

b) accommodation;

c) fulfilled his/her tax and social security obligations;

d) not been convicted of a sentence or sentences that, individually or cumulatively, exceed one year of imprisonment.

The application for renewal of the residence permit must be decided within 60 days, and in the absence of a decision, because of a reason not attributable to the applicant, the application is deemed to be granted.
The general conditions for granting a permanent residence permit are:

- a) hold a temporary residence permit for at least five years;
- b) absence of convictions in punishment or penalties that, individually or cumulatively, exceed one year of imprisonment;
- c) to have means of subsistence;
- d) to have accommodation;
- e) prove to know basic Portuguese.

The residence permit must be renewed every five years, or whenever the identification elements registered in it change.

Besides the residence permit, national law recognizes the right of residence in Portuguese territory subject to compliance with certain requirements:

- a) to third-country nationals who have acquired long-term resident status in another Member State of the European Union;
- b) to EU Blue Card Beneficiaries. It is a residence permit that entitles the holder to reside and pursue a highly qualified subordinate activity on national territory. This card may be issued to a third-country national who fulfils the necessary requirements;
- c) to workers transferred within a company or group of companies, operating in the national territory.

Portuguese law also recognizes the long-term resident status in the national territory to third-country nationals who have legal and uninterrupted residence in the national territory during the five years immediately preceding the filing of the application or, in case of beneficiary of international protection, from the date of filing of the application that resulted in the granting of international protection. Those should have stable and regular resources that are sufficient for their own livelihoods and that of their families, without resorting to the solidarity subsystem; health insurance; accommodation; and must demonstrate fluency in basic Portuguese.
Holders of residence permits, whether temporary or permanent, are entitled in particular to:

a) education and teaching;

b) exercise of a subordinate professional activity;

c) exercise of an independent professional activity;

d) vocational guidance, training, perfecting and retraining;

e) access to health;

f) access to law and courts.
2. HOW TO ACQUIRE PORTUGUESE NATIONALITY

Nationality establishes to which country the rights and duties of a person are attached. And it can change throughout life.

Portuguese nationality can be acquired at birth or during life, and can also be lost.

Portuguese law allows a Portuguese to have other nationalities. Therefore, it is not necessary to give up another nationality to acquire Portuguese nationality. However, the laws of other countries may require you to relinquish Portuguese nationality in order to acquire the nationality of one of those states.

Portuguese of origin are:

a) the children of a Portuguese mother or a Portuguese father born in Portuguese territory;

b) the children of a Portuguese mother or a Portuguese father born abroad, if the Portuguese parent is there in the service of the Portuguese State;

c) children of a Portuguese mother or a Portuguese father born abroad, if their birth is registered in the Portuguese civil registry or if they declare that they want to be Portuguese;

d) foreign-born individuals with at least one second-degree Portuguese national ascendant in the straight line who have not lost that nationality, if they declare that they want to be Portuguese, if they have ties of effective attachment to the national community and, if such requirements are verified, they inscribe the birth in the Portuguese civil registry;

e) individuals born in Portuguese territory, children of foreigners, if at least one parent is also born here and has residence, regardless of the type, at the time of birth;

f) individuals born in Portuguese territory, children of foreigners who are not in the service of the respective State, who do not declare they
don’t want to be Portuguese, provided that, at the time of birth, one of the parents has been legally resident here for at least two years;

g) individuals born in Portuguese territory who do not have another nationality.

May acquire Portuguese nationality:

a) minor or incapable children of a father or mother who acquires Portuguese nationality;

b) foreigners married or in a *de facto* union with a Portuguese national for more than three years;

c) a foreigner who, at the time of the declaration, has lived in a *de facto* union with a Portuguese national for more than three years;

d) the adopted by Portuguese national;

e) foreigners who are older or emancipated under Portuguese law who have been legally resident in Portuguese territory for at least five years, have sufficient knowledge of the Portuguese language, have not been sentenced, with a final judgment, to imprisonment of 3 or more years and do not constitute a danger or threat to national security or national defence by their involvement in activities related to the practice of terrorism.

Portuguese nationality can still be granted to:

a) minors born in Portuguese territory, who are children of foreign parents; have sufficient knowledge of the Portuguese language, have not been convicted with a final judgment, with imprisonment of 3 years or more, do not constitute a danger or threat to security or national defence for his involvement in activities related to the practice of terrorism, one parent has residence in Portuguese territory for at least five years immediately prior to the application and the minor has completed at least one cycle of basic education in Portugal, or secondary education;

b) minors accepted in a public, cooperative, social or private institution with a cooperation agreement with the State, following a definitive promotion and protection measure applied in a promotion and protection process (process promoted by the Public Prosecution Service);
c) individuals who have had Portuguese nationality and who, having lost it, have never acquired another nationality;

d) individuals who were born in Portuguese territory, are children of a foreigner who resided here, regardless of title, at the time of birth and that reside here, regardless of title, for at least five years;

e) individuals who, not being stateless, have had Portuguese nationality, those who are descended from Portuguese, members of communities of Portuguese descent and foreigners who have provided or are required to provide relevant services to the Portuguese State or the national community;

f) descendants of Portuguese Sephardic Jews, by demonstrating the tradition of belonging to a Sephardic community of Portuguese origin, based on proven objective requirements of connection with Portugal, namely last names, family language, direct or collateral descent;

g) individuals who are of Portuguese descent origin must reside here, regardless of title, for at least five years immediately prior to the request and provided that the ancestry was established at the time of birth of the Portuguese citizen.

**Portuguese nationality by naturalization** is granted, at the request of the interested party, by decision of the Minister of Justice.

The application for Portuguese nationality has a cost of 250 €.

Portuguese nationality may be requested:

a) at a counter of the Institute of Registration and Notary Affairs (IRN) at the Centro Nacional de Apoio à Integração de Migrantes (National Centre for Support for the Integration of Migrants), in Lisbon and Porto;

b) at the Espaço Registos of Areeiro, in Lisbon;

c) in the Loja do Cidadão of Odíveis;

d) in a civil registry office;

e) at a Balcão da Nacionalidade (Nationality Counter);

f) at the Portuguese consulate of the area of residence.
It may also be requested by post to the Central Registry Office.

For further information, in particular for obtaining drafts and declaration and application forms for obtaining Portuguese nationality, see the Nationality guide available at justica.gov.pt.
3. TO RENT OR BUY PROPERTY

3.1. To rent property

The lease contract consists of the agreement between the property owner (landlord) and the lessee (tenant) whereby, by means of a monetary consideration (the rent), the former lends to the latter a particular property for its use.

The urban lease contract must be in writing. This contract must contain the identification of the parties, the identification of the property, the value of the rent, the term of the contract, the existence of a license, the purpose of the lease (residential or non-residential) and the mention of the energy certification of the property.

This contract may also, among other matters which the owner and the lessee wish to see agreed from the outset:

a) identify the possibility of subletting;

b) stipulate authorization for the tenant to conclude the necessary supply contracts (water, electricity, gas, communications) or stipulate that these expenses are fully or partially borne by the landlord;

c) determine the date of payment of the rent; otherwise, the first rent is due at the time the contract is signed and each other is due on the first business day of the month immediately preceding the one to which it relates;

d) determine the place and method of payment of rent, otherwise it must be paid at the lessee’s domicile;

e) provide for the obligation to pay the condominium dues. These, as a rule, are the owner’s responsibility. However, in the lease agreement the parties may transfer this liability to the lessee.

The security deposit (amount intended to pay for any damage the lessee may cause to the property during occupancy) is not mandatory, but the landlord may ask for it as collateral. This should be stated in the contract.
as well as the form of its return if no damages to the repair result from the occupation.

The **security deposit should not be confused with rent advance** because they are intended for different purposes. The advance is only intended to ensure payment of the last month’s rent.

Urban lease ceases by agreement of the parties, termination (by one party on the grounds of non-compliance by the other party), forfeiture, rescission or other causes provided by law.

Among others, the **owner’s obligations** are:

- **a)** perform all conservation works, ordinary or extraordinary, required by law or the termination of the contract, unless otherwise stipulated;
- **b)** pay condominium dues except when this liability has been transferred to the lessee in the lease agreement;
- **c)** communicate the celebration of the contract to the tax services and issue income receipts;
- **d)** at the end of the contract, compensate the lessee for the improvements made;
- **e)** if you decide to sell the property, give preference to the lessee if the contract lasts for more than two years;
- **f)** inform the lessee of the increase or update of the rent.

Among others, the **lessee’s obligations** are:

- **a)** to pay the rent on time;
- **b)** to pay current charges and expenses relating to the supply of goods or services relating to the leased property;
- **c)** to request written permission from the owner to perform works;
- **d)** to effectively use the property for the purpose contracted, always using it for more than one year;
- **e)** to return the leased property to the owner as soon as the contract ends.
In the event of non-compliance with the terms of the lease, owners and lessees may resort to:

- **National Rental Desk (BNA).** Service of the Ministry of Justice with exclusive competence to handle the special eviction procedure throughout the national territory. The Special Eviction Procedure is a procedural means intended to make the termination of the lease effective, when the lessee does not vacate the property on the date provided by law or on the date set by the parties. More information at [bna.mj.pt](http://bna.mj.pt).

- **Rental Injunction Service (SIMA).** Ministry of Justice service set up under a set of measures to remedy disagreements between tenants and landlords, to enhance the security and stability of urban leasing and to protect tenants in a particularly fragile situation.

This service, with competence throughout the national territory, proceeds with the injunctions in the matter of lease that are intended to realize the following rights of the lessee:

- Payment of the right amount of the compensation due for the works made in the property, in replacement of the owner;
- Termination of activities that cause risk to the tenant’s health;
- Correction of property deficiencies that cause serious risk to the health or safety of persons or property;
- Correction of impediment of the fruition of the property.

### 3.2. To buy property

The purchase of a property, whether for permanent housing, secondary housing or investment, involves a set of steps and procedures.

It is important to start by ensuring that the choice of property is correct and that takes into account all its characteristics. It is therefore important to consider the information in the **Housing Data Sheet**. This document must be made available by the seller and must be delivered to the buyer upon public deed. However, a copy may also be obtained from the City Council for all properties built after 1951 or from the property developer if it is a building under 10 years old.
The **energy certificate** is a document that also contains useful information about the energy performance of the property. This document must be requested from the seller and must be presented by the seller at the time of the deed.

It must also be ensured that the seller is the owner of the house and that there is no unknown burden or burden on the property. This information can be verified through the **Land Registry Certificate** or permanent land registration certificate. This document can be obtained from the Land Registry Office or online through the Ministry of Justice Online Land Registry at [predialonline.pt](http://predialonline.pt) or [justica.gov.pt](http://justica.gov.pt). This certificate is indispensable when the public deed is signed.

You should also seek to know the tax situation of the property. All the information is available in the **certificate of title** (Caderneta Predial). This document can be requested at the Finance counters or on the respective portal. The seller must make it available and it is fundamental to the celebration of the deed.

It is not mandatory to enter into a **pre-contract agreement to buy and sell property**. However, this contract ensures, as long as the actual purchase and sale is not made, that the commitment between the buyer and seller takes a more solemn form, giving rights to both parties in the event of default. It makes sense whenever the necessary conditions are not ensured for the signature of a deed of sale, such as pending the approval of financing or the construction of the property.

It is a signed document, between who promises to sell and who promises to buy, which ensures the formalization of the purchase and sale under terms agreed between the two parties. This document regulates the rights and duties of the buyer and seller, establishes the amount of the purchase and the down payment given, the date of delivery of the property and the date of conclusion of the definitive contract, with possible consequences in the event of default, namely a reference to the specific execution, which allows either party to obtain a judgment that produces the effects of the missing trade declaration. The offer to purchase agreement must also indicate, where appropriate, that the property will be sold free of any encumbrances or charges.

**Key elements of the pre-contract agreement to buy and sell property:**

a) identification of buyer and seller;

b) citizen Card Number / ID Card, Taxpayer Number;

c) property identification;
d) value given as a signal and the purchase price;

e) date for the execution of the deed;

f) indication of sanctions to be applied in case the deed is not executed within the established period;

g) building or housing license given by the City Council;

h) disposal clause free of any encumbrances or charges (protects the buyer by removing him from the responsibility of responding to any charges on the property such as mortgages or foreclosures).

The entry into this contract does not require a public deed. However, it must be concluded by a document signed by the parties that are bound, with face-to-face recognition of their signatures, under penalty of nullity, i.e. no effect. It shall also include the certification, by the entity that recognizes the signatures, of the existence of the respective license for use or construction. In-person recognition of signatures and certification of the license can be done in a notary office. The website Predial Online provides drafts of this type of contract.

There are sanctions if the promised deed does not come to pass. If it is the fault of the buyer, he/she may be without all amounts paid as a signal to the seller. If the default is attributable to the seller, the buyer will receive the signal, already paid, in duplicate.

If you do not have the full value of the property, you can resort to financing with any banking institution.

The loan and mortgage agreement entered into between the buyer and the bank occurs on the same day as the purchase and sale agreement. This document stipulates the debt incurred, payment terms and interest rates. Signing this agreement is the essential step to accessing the loan amount and thus paying the seller the full amount agreed.

The deed of purchase and sale of property can be entered into at any notary office. It is an authentic document made by the notary, which is the legal form of the transaction of purchase and sale of the property. The time of the deed represents the conclusion of the definitive purchase and sale agreement, formalizing the transfer of the property from the seller to the buyer.

To make this process simpler, less bureaucratic and accessible, the Casa Pronta service is also available nationwide. This service is available at one-stop-shops at the Institute of Registries and Notary service facilities, land registry offices and at the land registry counters.
This service allows to perform all the formalities necessary for the purchase and sale, donation, exchange, donation in payment of urban, mixed or rustic buildings, with or without bank credit, to transfer a bank loan for the purchase of housing from a bank to another bank or a mortgage loan on the property at a single attending desk. In the Casa Pronta service it is also possible to make the constitution of horizontal property.

Through the Casa Pronta service it is also possible to request change of address on the citizen card, proceed to the payment of the Stamp Duty (IS) and the Tax on Real Estate Transfers (IMT).

Thus, in **one single place the entire buying and selling process is completed**. The citizen exits the Casa Pronta counter with the business completion certificates. Casa Pronta also offers an online service that allows:

a) citizens and businesses to complete and electronically submit the advertisement intended to publicize the essential elements of the business they intend to conduct, so that public entities with pre-emptive legal rights can express their intention to exercise such right or not. The cost of this advertisement is 15 €;

b) public entities with pre-emptive legal rights to express their intention to exercise those rights through this site, leaving people and companies exempt from obtaining and paying negative pre-emptive rights certificates from these entities before entering into the business;

c) citizens, companies and registration services consult the advertisements submitted and check at any time whether any public entity with a pre-emptive legal right has expressed its intention to exercise that right;

d) banks to request and consult the permanent property registration certificate.

Both the purchase of a house and the request for financing for this purpose entail costs related to the registration, the formalization of contracts and the deed of the property.

Using the Casa Pronta service, costs already include the deed and the registration of the purchase and mortgage.

Finally, you must pay the Land Registration Certificate, which is valid for 6 months and its cost differs depending on whether it is requested online or at a counter of a Land Registry.

More information available at casapronta.pt or justica.gov.pt.
4. TO WORK IN PORTUGAL

4.1. General rules

Under Portuguese law, a work contract is a contract whereby a natural person agrees, by way of a remuneration, to work for another person or for others within the framework of the organisation and under their authority of the Labour Code (CT).

A work contract differs from other types of contract, in particular the service contract, where one of the parties agrees to provide the other a specific work, resulting from his intellectual or manual work, with or without remuneration (Article 1154 of the Civil Code). In fact:

a) on the one hand, while the work contract is characterised by the provision of an activity carried out on a subordinate basis, in the service contract one of the parties undertakes to provide the other a specific work;

b) on the other hand, whereas the work contract is a contract in which there is always a remuneration, in the service contract, there may be payment or not.

4.2. Types of working contracts

The Portuguese law, starting with the Constitution, enshrines a number of workers’ rights, including the principle of job security and of dismissal without fair cause or for political or ideological reasons (Article 53 of the Constitution). This principle covers, in particular, all the situations that result in precarious employment relationships. Hence, in the light of the Portuguese legal order, a temporarily open-ended work contract is the rule and a non-permanent work contract is the exception.

It is therefore appropriate to look at the following ways:

a) an open-ended work contract is a legal, bilateral act, whereby a natural person undertakes, against payment of a remuneration, to carry out his activity under the authority and direction of another person, usually in a productive organisation, without any limitation on the duration of the employment relationship (Article 11 CT);
by contrast, in the fixed-term work contract, a time-period for the duration of the contract is set, complying this contract with a number of special rules, such as:

- the existence of a ground of justification, in particular, the temporary need of the company, and the period strictly necessary to meet such need (Article 140 CT);
- conditional to a written form (Article 141 CT) — thus making an exception to the general rule that the work contract is not subject to any special form (Article 110 CT), a rule that applies to the open-ended work contract.

4.3. Work contract with a special regime: the domestic work contract

In addition to this classification, it should be referred that Portuguese law provides for some types of special regime working contracts, to which the general rules of the Labour Code that are compatible with their specific nature apply (Article 9 CT).

In this scope, it stands out, for its practical relevance, the domestic service contract, governed by Decree-Law 235/92, of 24 October. In this type of contract, a person is obliged, through remuneration, to provide others, on a regular basis, under their direction and authority, activities designed to meet the specific needs of a household, or similar, and of its members (Article 2):

a) preparation of meals;

b) washing and treatment of clothing;

c) cleaning and housekeeping;

d) surveillance and care of children, the elderly and the sick;

e) treatment of domestic animals;

f) execution of gardening services;

g) execution of sewing services;

h) coordination and supervision of tasks of the type above mentioned.
Only a person who has reached the age of 16 may provide domestic service. The employer shall notify the employment of a person under 18, within 90 days, to the Authority for the Working Conditions (Article 4).

The domestic service contract is not subject to any special form, except if it is during a certain period (Article 3), as is the case, for instance, when the duration of the contract is fixed.

**4.4. Conditions for the conclusion of a work contact with a foreign or stateless worker**

Portuguese law lays down the rule that a foreign or stateless worker who is allowed to pursue a subordinate professional activity in Portuguese territory enjoys the same rights and is subject to the same obligations as the Portuguese worker (Article 4 CT).

The form and content of the work contract with a foreign or stateless worker has some specific features. However, they do not apply to work contracts concluded with nationals of any Member State of the European Economic Area or of another State establishing equal treatment with nationals as regards freedom to pursue a trade or profession (Article 5 CT). Thus, in such cases, the work contract follows the same rules as the work contract with a Portuguese worker.

In all other cases, the work contract with foreign or stateless workers (Article 5 CT):

a) shall be drawn up in writing;

b) shall contain, without prejudice to other requirements when it is a fixed-term work contract: the identification, the signature and domicile or registered office of the parties concerned; the reference to the working visa or residence permit or a certificate allowing the worker to remain in Portuguese territory; the employer’s activity; the activity contracted and the remuneration of the worker; the working place and normal period of work; the value, frequency and form of payment of the remuneration; the dates of the conclusion of the contract and the beginning of the activity.

c) shall be drawn up in duplicate, and the employer shall give one of the copies to the employee. The copy of the contract that stays with the employer has to have the documents confirming that all the legal obligations related to the entry and permanence or residence of the foreign national or stateless person in Portugal have been complied with;
d) before being executed, it shall have to be communicated to the Authority for the Working Conditions by means of an electronic form, and the termination thereof shall be communicated within 15 days after taking place.
5. CONTRACTS: GENERAL APPROACH

5.1. Principles and form

Contracts are the expression of all legal transactions and the main source of obligations. They may take various forms, in some cases conditioning their validity, and have a wide range of objects. They are concluded on a daily basis in all transactions carried out, with greater or lesser formality.

The legal rules governing contracts, with the exception of certain specific cases, are laid down in the Civil Code.

The principle of contractual freedom applies in Portugal, that is, within the limits of the law, the parties may freely determine the content of contracts, enter into contracts different from those provided for in the Civil Code or include in them any clauses they deem appropriate. They may also bring together in the same contract, rules of two or more transactions, in whole or in part, regulated by law.

The principle of good faith also applies. This means that a person who negotiates with others the conclusion of a contract must proceed in accordance with the rules of good faith, failing which he/she shall be liable for the damages caused to the other party.

When the object is physically or legally impossible, contrary to the law or indeterminable the legal transactions shall be null and void. Legal transactions contrary to the public order or offensive to the moral rules are also null and void.

Usurious legal transactions, that is, when someone, by exploiting a situation of need, lack of experience, lightness, dependence, mental state or weakness of another person, obtains, for himself or third party, the promise of, or excessive or unjustified benefits, are voidable.

In force is also the principle that contracts must be fully complied with and may only be modified or terminated with the consent of those who have concluded them or in the cases laid down by law.

Contracts take effect between the parties. They only take effect in relation to third parties in the cases and terms specifically provided for by law.

Some contracts, such as the purchase and sale of real estate or motor vehicles, require the subsequent registration of property. The simple and
ordinary transactions in daily life, such as the purchase and sale of most of movable and consumer goods, are contracts that do not require anything more than the parties’ compliance, without further legal requirements.

5.2. Contractual default

A contractual default occurs where one of the parties fails to perform or does not adequately carry out his obligation. The debtor who fails to comply with the obligation becomes liable for the damages caused to the creditor.

The default can be:

- **definitive**, where it is impossible to comply with the obligation;

- **delayed** (default interest), when compliance is late, but it is still possible to fulfil it;

- **defective**, when not in accordance with the terms stipulated in the contract.

Where there is a contractual default, several reactions are possible:

- **termination of the contract**. On the basis of one party’s default, the other party may terminate, i.e. end the contract. If the party has already fulfilled his part, he may claim a refund.

- **resort to alternative dispute resolution means**. Alternative dispute resolution is always possible. Many contracts already provide the resolution of disputes to be made in this way. Nevertheless, even if it is not stipulated in the contract, or in the cases where the contract has not taken a written form, resorting to these means is also possible.

- **enforcement or judicial recovery**. An enforced recovery is made by means of legal proceedings. If the creditor is already in possession of an enforceable order, he may bring an enforcement action right away. This is the appropriate procedural mechanism for the creditor to request the interim measures able to satisfy his claim. The creditor may request payment of a certain amount; the delivery of the certain thing; or the rendering of acts (performance of a specific action or service).
One of the most used interim measures is the attachment, i.e. the seizure of the assets and/or the proceeds of the debtor, in order to pay the creditors.

In the enforcement action, the role of the Enforcement Agents, professionals responsible for the practical recovery and payment arrangements to creditors, must be highlighted.

However, if the creditor is not yet in possession of an enforceable order, he may resort to the courts to obtain it. The appropriate action in this case is the declarative action, through which the court recognises the claim. The judgment handed down in this case takes the form of an enforceable order.

It is also possible to obtain an enforceable order through an order for payment procedure, which allows a creditor of a debt to obtain an enforceable order, in an easier and faster manner, without resorting to court.

This procedure can only be used where a debt of 15,000 € or less is at stake or if it is a debt resulting from a commercial transaction, provided it does not result from a consumer contract.

The application for a payment order is electronically processed at the National Payment Orders Office. However, the application for a payment order may be submitted, on paper or in computer files, anywhere in the country, before any competent court. In these cases, these courts refer the application, electronically, to the National Payment Orders Office. Once the creditor’s application for a payment order is submitted, the debtor shall be notified of this application and, if he does not object, the enforceable order shall be issued. If he objects, the case is referred to court for decision.

The creditor is, as a rule, entitled to compensation for the debtor’s default, but for this to happen, the default has to cause damage or loss to the creditor and the latter has to be able to prove it.

There are also contracts, which already include a penalty clause, i.e. contracts where a specific liability regime for default is already established, which may include specific compensation.

In order to activate the compensation, the debtor must be contacted, but if no immediate agreement is reached, the resort to the courts or to other alternative dispute resolution means is possible.
5.3. Insolvency and special procedure for payment agreement

A number of circumstances may determine the impossibility of paying all the obligations entered into. In this case, the insolvency, of a natural person or of a company, is possible.

Nonetheless, where a (natural or legal) person is in a difficult economic situation and faces imminent insolvency, i.e. where the impossibility of payment is not yet absolute, but there are serious difficulties in complying with the obligations entered into, resort to the Special Procedure for Payment Agreement (PEAP) is possible. In the case of legal persons, the Special Revitalisation Procedure (PER) may be used in the same circumstances.

These are judicial proceedings, starting with the lodging of an application to the Court, signed by the debtor and at least one of his/her creditors, with a view to promoting negotiation with all creditors and consequent approval of a payment agreement.
6. CONSUMERS RIGHTS

6.1. Framework

Consumer law covers rules of several branches of law. They have in common the fact that they seek the protection of the consumers, given the imbalance that it is likely to exist when they contract a professional.

The general principles of the Portuguese consumer law are laid down in the Consumer Protection Law (Law 24/96, of 31 July). According to this law, the consumer is a person to whom goods, services or rights, for non-professional use, are provided by a professional in the course of his business (although it should be borne in mind that in the context of other legal diplomas the Portuguese law recognises other consumer definitions).

The law recognises to consumers certain rights. They include:

- **right to goods and services of quality** - goods and services for consumption must be suitable for the purposes for which they are designed, and shall be capable of producing the effects conferred upon them in accordance with the rules laid down by law or, in the absence of such rules, in an appropriate manner to meet the legitimate expectations of the consumer.

- **right to health protection and safety** - the supply of goods or services, which under normal conditions of use, entail risks incompatible with their use, and not acceptable under a high level of health protection and physical safety of persons, is prohibited.

- **right to information** - the supplier of goods or services shall, both at the negotiation and contracting stage, inform the consumer, in a clear, objective and appropriate manner, unless this information is clear and obvious from the context, the following:

  - main characteristics of the goods or services;
  - identity of the supplier of the goods or services;
  - total price of the goods or services;
• duration of the contract;

• existence of a guarantee of conformity of the goods, with an indication of the deadline, and, where appropriate, the existence of after-sales services and commercial guarantees, with a description of their terms and conditions.

6.2. General contractual clauses

A contract where one of the parties - whether or not it is a consumer - concludes a contract without being able to discuss or negotiate changes to the transaction submitted by the counterparty, and merely accedes to the terms that the other party has unilaterally defined, that are the general contractual clauses.

In such cases, the freedom of contract is, in practice, confined to the acceptance or rejection of the transaction. In order to protect the adhering party, the company that proposes the contract is required, by law, to communicate to the adhering party, in an appropriate and effective manner, the clauses contained in the negotiating model, and to clarify those terms that may not be clear. For the same reason, the law prohibits, in all cases or depending on the specific transaction, the insertion of certain contractual clauses.

DGPJ keeps online an updated register of the contractual clauses declared null and void by the courts, at dgpj.justica.gov.pt.

6.3. Sale of consumer goods

In the case of contracts for the purchase or sale of consumer goods (or other onerous contracts for the transfer of goods, such as the exchange), and if the purchase is not in conformity with the contract, the consumer is entitled to have the goods repaired or replaced free of charge, to a reduction in the price or to terminate the contract. In parallel with these rights, the consumer may require the supplier to pay compensation for the damage caused by the non-conformity of the goods in general terms. This regime applies to tangible, mobile and immovable property, including second-hand goods.

There is no hierarchy in the rights granted to consumers in the contracts for purchase or sale.

The consumer may freely choose any of the rights granted to him. Only when it is impossible for the supplier to fulfil one of the obligations aris-
sing from the option chosen (imagine that the supplier handed over to the consumer, by mistake, a good different from the one he has purchased; in this case reparation is impossible), or if the consumer’s choice constitutes an abuse of rights.

The supplier shall be held responsible for the lack of conformity of the goods that becomes apparent within two or five years from the date of delivery, depending on whether they are movable or immovable respectively. The law assumes that the lack of conformity arising within that period already existed at the time of delivery. Consequently, the consumer does not have to prove that the defect existed at that time; only that it appeared within the prescribed period.

However, in order to exercise the rights conferred on him by law, the consumer shall inform the supplier of the lack of conformity which he has identified within two months in the case of movable property, or within one year in the case of immovable property. Once the lack of conformity has been reported, the consumer has one year to bring legal proceedings should the supplier not comply with them on a voluntary basis.

### 6.4. Distance contracts and off-premises contracts

In the case of **distance contracts** (e.g. via the internet), and **off-premises contracts** (e.g. when the supplier goes to the debtor’s residence), situations in which the consumer is deemed to be in a situation of particular fragility, the supplier has the duty to provide the consumer with a number of mandatory elements related, for instance, to his identity, the good or service to be acquired, the clauses of the contract or after-sales service conditions.

When one of these contracts is concluded, the consumer is granted, by law, the **right to regret**, by giving him a right to freely terminate the contract — by means of any unequivocal statement — within 14 days of the delivery of the goods or of the conclusion of the contract in the case of service contracts. (it should be noted that there are contracts to which the right to regret does not apply; the list of exceptions may be found in Decree-Law 24/2014, of 14 February 2007). The supplier shall inform the consumer about this right before the conclusion of the contract. If he does not do so, the 14-day time limit is increased to 12 months and 14 days.
6.5. Essential public services

Are deemed essential public services, given their general interest, the provision of the following services:

- water;
- electrical energy;
- natural gas and liquefied petroleum gases;
- electronic communications service, postal services;
- wastewater collection and treatment, and the municipal waste management.

Considering that they are essential to the user (the regime does not only concern consumers within the meaning of the Law on Consumer Protection), the provision of these services may not be suspended without adequate notice, unless unforeseeable circumstances or of force majeure apply. Even where the user has not performed the payment to which he is contractually bound, the suspension may not take place before the user has been notified of the suspension, in writing, with at least 20 days in advance. Likewise, in order to protect the user, by preventing debts from accumulating, the right of the essential public service provider to receive the payment shall expire within six months from the date of the provision.
7. MARRIAGE AND DIVORCE

7.1. Marriage

Portuguese law regulates in detail the aspects related to the celebration and effects of marriage, in particular in the Civil Code (CC) and the Civil Registration Code (CRC).

In this context, the rules applicable to the conditions for marrying, the procedure leading to the conclusion of the marriage, the celebration of the civil marriage and the registration of the marriage should be observed.

It is mandatory to register marriages:

- celebrated in Portugal;
- of Portuguese people celebrated abroad;
- of foreigners who, after the celebration, acquire Portuguese nationality.

This requires the initiation of the marriage procedure, which will be concluded with the registration of the marriage contract.

The general rule of Portuguese law is that persons who have no marital impediments as provided for by law (Article 1600 CC) that is, circumstances that somehow hinder the celebration of marriage, are entitled to marry.

The law considers as absolute impediments to the celebration of marriage, that is, preventing the marriage of the person to whom such impediments respect with any other (Article 1601 CC):

- age under sixteen, although when one of the members of the couple is sixteen years old or over but under eighteen years of age, an authorization must be obtained from the parents or from a guardian for the marriage to occur or the authorization of the civil registrar;
- notorious dementia, even during lucid breaks, as well as the “accompanying adult” status when the respective court decision so requires - benefit from the accompanying measures (for health, disabi-
lity or behaviour), the adult unable to exercise, fully, personally and knowingly, his/her rights or to perform his/her duties (Article 138 CC);

- **undissolved previous marriage**, Catholic or civil, even if it has not been recorded in the civil status register.

In addition, the law also considers as **impediments** to the celebration of marriage, since they only prevent the marriage between the persons to whom they respect (Article 1602 CC):

- **relationship in the straight line** or in the **second degree of the collateral line** – kindred relationship is the bond that links two people by virtue of one descending from the other or both descending from a common parent (Article 1578 CC), as is the case, for example, of brothers;

- **affinity in the straight line**, with affinity being the bond that links one spouse to the other’s relatives;

- previous list of **parental responsibilities**;

- **previous conviction** of either the bride or the groom, as perpetrator or accomplice, for intentional, even if not consummated, murder against the spouse of the other (bride/groom).

Finally, are also considered as **impediments to the celebration of marriage**, although they are considered **less serious**, and the first three may be supplied or waived by the registrar if there are serious reasons justifying the marriage (Articles 1604 and 1609 CC):

- lack of parental or guardian authorization for the marriage of a bride or groom who is sixteen years of age or older but less than eighteen;

- relationship in the third degree of the collateral line - as, for example, between uncle and his niece/nephew;

- the bond of guardianship, supervision of person over the age of 18 years or management of property;

- the bride/groom’s pronouncement for the crime of murder, even if not consummated, against the spouse of the other bride/groom, pending final acquittal.
The **procedure leading to the celebration of marriage** begins by the declaration of will by the bride and groom or through a proxy representing them, in any registry office. The declaration for the initiation of proceedings relating to a Catholic marriage may also be made by the parish priest competent for the organization of the canonical process in the form of an application signed by him (Articles 134 and 135 CRC).

This declaration for marriage shall contain, inter alia, the type of marriage that the bride and groom intend to contract (civil, catholic or civil in religious form), the conservatory or parish in which it is to be celebrated and, in the case of a civil marriage in religious form, the indication of the minister of the worship accredited to the act, as well as the mention that the marriage is being celebrated with or without a **prenuptial agreement**, unless the property regime is imperative (Article 136 CRC).

In fact, Portuguese law accepts the rule that the bride and groom may freely fix, in a prenuptial agreement, the **matrimonial property regime**, either by choosing one of the regimes provided for by law or by stipulating what they wish within the limits of the law (Articles 1698 and 1699 CC).

Thus, if there is no prenuptial agreement (or in the event of expiry, invalidity or ineffectiveness of the agreement), the marriage is considered to be concluded under the matrimonial regime of sharing of acquired matrimonial assets (Article 1717 CC).

However, if there is a prenuptial agreement (which is valid only if it is concluded by a declaration made before a civil registry official or by public deed (Article 1710 CC), the following matrimonial property regimes may be chosen:

- the **regime of sharing of acquired matrimonial assets**, in which the product of the work of the spouses and the goods acquired in the course of marriage, which are not excepted by law, are part of the sharing; The property of each spouse shall be deemed to be the property which each spouse has at the time of the marriage, the property which he/she receives after the marriage by donation or succession, and the property acquired in the course of marriage by virtue of own right prior to the marriage (Article 1722 CC);

- the **full community property regime**, in which the common property of the spouses is made up of all property regardless of whether it is acquired for consideration or free of charge, before or after marriage, which is not excepted by law (Article 1732 CC). It should be noted that the full community property regime cannot be chosen when any of the bride or groom already has a non-common child, even if of legal age or emancipated (Article 1699 CC);
• **the separate property regime**, in which each spouse retains control and enjoyment of all his/her present and future assets, and may freely dispose of them (Article 1735), which means that in this property regime there is no communion, regardless of whether it was purchased for consideration or free of charge, before or after marriage. It should be noted that the law imposes the mandatory regime of separate property when one or both bride/groom is 60 years old (Article 1720 CC).

With the publication of Law No. 48/2018, of 14 August, since 1 September 2018, the future spouses who have chosen the separation of property regime may also reciprocally waive the status of legitimate heir of the other spouse;

• **other regimes** agreed by the bride and groom, as the law allows them to choose a different scheme, stipulating what they want, within the limits of the law, and may combine characteristics of the above-mentioned regimes (Article 1698 CC).

The declaration for marriage must be accompanied by the **identification documents** of the bride and groom or, one or both being foreign nationals, the title or residence permit, passport or equivalent document, as well as a certificate of the prenuptial agreement deed, if it has been entered into; If one or both of the grooms are foreign nationals, the birth certificate of that or these citizens must also be presented (Article 137 CRC).

With the declaration for marriage, the bride and groom require the initiation of the marriage process (Article 135 CRC), in which the civil registrar takes the necessary steps to verify the identity and marital capacity of the bride and groom (Article 143 CRC) and, in the end, makes an order to authorize the bride and groom to celebrate the marriage or to have the process closed. An order stating that marriage celebration is unfavourable is notified to the bride and groom, either in person or by registered letter (Article 144 CRC), and may appealed to the district court of the area to which the civil registry (Article 286 CRC).

If the marriage is authorized, it shall be concluded within the following six months (Article 145 CRC).

The date, time and place of the celebration of the civil marriage shall be agreed between the bride and groom and the civil registrar, being any registrar competent for the celebration regardless of the parish and county where it is to be celebrated (Article 153 CRC). The celebration of civil marriage outside the opening hours and on Saturdays, Sundays and holidays, in a civil registry office or any other place to which the public has access, may take place whenever the act is expressly requested and agreed with the bride and groom.
In the civil marriage ceremony, the bride and groom, or one of them and the attorney of the other, and the civil registrar must be present, and two to four witnesses may intervene (Article 154 CRC).

Actually, the presence of witnesses is not mandatory, except when the identity of the bride or groom, if any, is not verified through the personal knowledge of the civil registrar, the display of their identification documents or if the bride or groom or both are foreign nationals, the residence permit, passport or equivalent document (Article 154 CRC).

The celebration of a marriage is public, so anyone can attend it, and obeys the solemnity outlined in the law (Article 155 CRC).

The celebration in Portugal of marriage between a Portuguese citizen and a foreign citizen, on the one hand, or between two foreign citizens, on the other hand, obeys some common rules, although each of these situations has specificities.

Thus, starting with the common rules, it should be noted that the capacity to marry is regulated, for both the bride and groom, by their personal law, that is, by the law of the nationality of the bride or groom (Articles 31 and 49 CC). The same rule applies to the determination of the ability to enter into the prenuptial agreement (cited Articles), even though the law regulating its content and effects must be considered in accordance with Article 53 CC.

In the context of the marriage process, the foreign citizen or citizens wishing to celebrate marriage in Portugal must, in addition to submitting the documents provided for in Article 137 CRC (see above), prove that they have the capacity to according to the law of their nationality to contract marriage. This proof is usually provided by a certificate issued by the competent authorities of the country respectively of the bride or groom issued less than six months ago (if no other period is stipulated by the law of his/her country) showing that, according to the bride or groom’s nationality law does not preclude the conclusion of the marriage. However, where such a certificate cannot be presented by the bride or the groom, its absence may be supplie by the declaration that, according to the law of his/her nationality, there is no impediment to the conclusion of the marriage (Article 166 CRC). In this regard, it should be noted that documents issued in a foreign country which are written in a language other than Portuguese must be accompanied by a certified translation, unless they are written in English, French or Spanish and the competent official speaks that language (Article 49 CRC).
The form of the marriage celebrated in Portugal between a Portuguese citizen and a foreign citizen is governed by Portuguese law (Article 50 CC) and can therefore only be effected by the forms and under the terms of the Civil Registration Code (Article 164 CRC).

The form of the marriage celebrated in Portugal between two foreign citizens will also, as a rule, be governed by Portuguese law (Article 50 CC). However, this marriage may be celebrated in the form and under the terms provided for in the national law of the bride or groom, before their diplomatic or consular agents, provided that the same jurisdiction is recognized by that law for Portuguese diplomatic and consular agents (Articles 51 CC and 165 CRC).

The marriage process can be initiated at the civil registry office or online at civilonline.mj.pt or at justica.gov.pt.

7.2. Divorce

Divorce matters are governed by the Civil Code, the Civil Registry Code, the Civil Procedure Code (CPC) and Decree-Law 272/2001, of 13 October.

Divorce dissolves the marriage, which means it breaks the legal bond that was established between two people at the time of marriage.

Portuguese law provides for two forms of divorce: divorce by mutual consent of both spouses, also known as «amicable divorce», and divorce without the consent of the other spouse (Article 1773 CC). While the former takes place by agreement of the spouses (who do not have to disclose the cause of divorce) and can be treated out of court, the latter must always be requested in court.

In divorce by mutual consent, the spouses may, by mutual agreement and at any time (i.e. without waiting for any period from the date of marriage), require the dissolution of the marriage (Articles 1773 and 1775 CC).

If the spouses have agreed on important matters of the future life, divorce is sought at the civil registry office; if, on the contrary, the couple has not been able to agree on any of these important matters, the divorce is filed in court (Article 1773 CC).

In the case of a divorce by mutual consent at the civil registry office, the proceedings are initiated by an application signed by both spouses or their attorneys, which can be filed at any civil registry office (Article 271 CRC) and must be accompanied by the following documents concerning relevant issues of the future life (Articles 1775 CC and 272 CRC):
- specified list of the common property of the couple, stating the respective values, or agreement on sharing or request for further information, in any case to ensure that neither person is harmed in sharing the property;

- when there are minor children, a certificate of the court regulating the exercise of parental responsibilities in respect of them or, if there has been no prior judicial regulation, the spouses’ agreement on the exercise of these parental responsibilities.

These reflect the powers and duties that the law assigns or imposes on parents to govern the person and property of their minor children, and their exercise should fulfil and promote their interests; the agreement on the exercise of parental responsibilities should include aspects such as the residence or residences of the child, the visiting arrangements and the maintenance allowance of the parent to whom the child was not entrusted.

- agreement of the spouses on the destination of the family home, which is, or has been, the permanent or principal residence of the spouses;

- spouses’ agreement on maintenance allowance to the spouse who is in need, if any;

- certificate of deed of the prenuptial agreement, if this agreement has been entered into and has not been made by means of a declaration made before a civil registry official;

- spouses’ agreement on the destination of family pets, if any.

Having received the application and the other documents mentioned above, the civil registry office informs the spouses of the existence and objectives of family mediation services (Article 1774 CC). These are alternative means of resolving disputes through the help of a specially certified professional for mediation between the spouses (the family mediator) in which an agreement is reached to resolve the dispute between them.

If the spouses maintain the desire to divorce, the registrar keeps them in a conference where the fulfilment of the legal requirements is verified and the agreements presented by them are examined. The registrar invites the spouses to amend the agreements if they do not safeguard the interests of any of them nor of their children (Article 1776 CC).
If there are minor children and the spouses have agreed to exercise parental responsibility with relation to them, the case is sent to the Public Prosecution Service to issue an opinion within 30 days. The Public Prosecution Service may require the parents to amend the agreement. If the spouses do not agree with the requested amendments and remain willing to get divorced, the case is referred to the court (Article 1776-A CC).

If all the conditions for divorce are met, the civil registrar decrees it and records it (Article 1776 CC).

Reference should also be made to the issue of divorce by mutual consent of foreign citizens resident in Portugal, which can also be requested in any civil registry office.

According to the Portuguese law (Article 52, by reference to Article 55, both of the CC), if a divorce proceeding is to be instituted in Portugal with a view to dissolving a marriage between a Portuguese citizen and a foreign citizen, or a marriage between two foreign citizens, it should be noted that, as a rule:

- divorce is governed by the common national law of the spouses;

- if the spouses are not of the same nationality, the law of their common habitual residence shall apply to divorce and, failing that, the law of the country with which family life is most closely related.

Thus, if both spouses are foreign nationals of the same nationality, the provisions of their respective common national law must be observed.

If the spouses do not have the same nationality (as will be the case when one spouse is a Portuguese citizen and the other is a foreign citizen, or when both spouses are foreign citizens albeit of a different nationality), the law of their common habitual residence shall apply, and, failing that, the law of the country with which family life is most closely related, and therefore, if it concerns persons residing in Portugal, Portuguese law shall apply.

Thus follows that the proceedings for divorce by mutual consent may be pursued at the civil registry office provided that it is found to be permitted by the law applicable to such divorce.

In this context, the Ministry of Justice offers the possibility to initiate online proceedings for divorce by mutual consent through the site justica.gov.pt.
If the spouses have not reach an agreement on any of the relevant issues of future life referred to above, the application for a divorce by mutual consent is filed with the court (Article 1778-A CC). This application must be signed by both spouses or their attorneys, accompanied by the following documents (Article 994 CPC):

- full narrative certificate of the marriage registration;
- specified list of common matrimonial assets, with indication of their values;
- when there are minor children, the spouses have agreed on the exercise of parental responsibilities regarding them;
- spouses’ agreement on the destination of the family home;
- spouses’ agreement on maintenance allowance to the spouse who is in need of it, if applicable;
- certificate of prenuptial agreement and registration, if any.

Upon receipt of the application and the other documents referred to above, the court informs the spouses of the existence and purpose of family mediation services (Article 1774 CC).

If the spouses maintain the desire to get divorced, the judge sets the day of the conference with the spouses, to which may call relatives or persons related to the spouses or any other persons whose presence finds useful (Article 995 CPC). At that conference, the judge appreciates the agreements the spouses have presented, inviting them to amend them if those agreements do not protect the interests of either spouse or their children (Article 1778-A CC).

If all the conditions are met, the judge pronounces the divorce and the respective registration is made (Article 1776 CC).

Divorce without the consent of one of the spouses is always filed in court by one spouse against the other and may have the following causes (Articles 1773 and 1781 CC):

- the de facto separation for a consecutive year;
- the alteration of the mental faculties of the other spouse, when it lasts for more than one year and, due to its severity, compromises the possibility of common life;
• absence, without news of the absent, for a period of one year or more;

• other facts that, regardless of the fault of the spouses, show the definite breakup of the marriage.

In divorce proceedings without the consent of the other spouse, there will always be an attempt to reconcile the spouses (Article 1779 CC).

If the attempt at reconciliation fails, the judge will seek the consent of the spouses for the divorce by mutual consent: if an agreement is reached or if the spouses have opted for such divorce at any point in the proceedings, the proceedings of the divorce by mutual consent shall be followed (Article 1779 CC); once the judge’s attempt to obtain the consent of the spouses to divorce by mutual consent is not successful, the judge seeks the agreement of the spouses on maintenance and on the regulation of the exercise of parental responsibilities (Article 931 CPC).
8. MINOR CHILDREN

8.1. Birth

The complete and alive birth marks the beginning of the legal life of a person (Article 66 CC), and the registration of a baby born in Portuguese territory is compulsory and free.

Birth registration can be done shortly after birth, preferably at the maternity clinic or hospital where the child was born or to which the mother was transferred after giving birth. To this end, the *Nascer Cidadão* service was created, which also allows you to apply for the new-born’s Citizen Card at the time of the registration.

If it is not possible to register the birth in the maternity clinic or hospital, the birth occurred in Portuguese territory must be declared verbally, within the following 20 days, in any registry office (Article 96 CRC).

To register the child, it is necessary to (see Article 102 CRC):

- **choose the full name of the child**, which is the parent’s choice (Article 1875 CC), consisting of at most two first names and four surnames. As a rule, the first names must be Portuguese. However, foreign first names are accepted if the child is a foreigner, born abroad or has a nationality other than Portuguese, and if any of the parents is foreign or has a nationality other than Portuguese (Article 103 CRC);

- **choose the child’s place of birth**: the parish where the child was born or the parish where the mother usually resides.

The child can and should be registered by either parent (Article 97 CRC). If the parents are not married and it is the mother who makes the registration, this will not include the father’s name, and he may later add his name to the child’s registration.

When a person registers a child, they are given a free certificate. After that, it is possible to request birth certificates as needed, which can be made available on paper or online.

It should be noted that children of foreign citizens may have Portuguese nationality at birth if one of the parents was born and resides in Portugal.
To this end, when registering the birth, the mother or father must present the documents proving their birth and residence.

Children of foreign citizens may also apply for Portuguese nationality at a later time, if any of the following situation occurs:

- if they have no nationality (stateless);
- if the mother or father resided in Portugal, without being in the service of their State, for more than 5 years when the child was born;
- if the mother or father has lived in Portugal for more than 5 years;
- if the child has completed primary school in Portugal;
- if the mother or father became Portuguese after the child’s birth and the child has an affective connection with the Portuguese community.

8.2. Regulation of parental responsibility

Children are subject to parental responsibility until the age of majority (18 years old) or until they are emancipated by marriage (Article 1877 CC).

Parental responsibilities consist of the power and duty that parents have, in the interest of their children, to ensure their safety and health, to provide for their livelihood, to direct their education, to represent them and to administer their property (Article 1878 CC).

When the parents are married, the exercise of parental responsibilities belongs to both parents, who must exercise them by mutual agreement, and if the agreement is not possible matters of particular importance, either parent may appeal to the court, which will seek conciliation (Article 1901 CC).

However, if the couple is no longer able to live a common life, their first objective should be to protect the child and ensure that their interests are safeguarded. It is therefore important to make important decisions about the future, such as who the child will live with or which will be the value of the maintenance allowance.

Portuguese law establishes the rule that, in cases of divorce, legal separation or declaration of invalidity or marriage annulment, the exercise of parental responsibility for acts of the child’s ordinary life is the responsibility of the parent with whom he/she usually resides, or the parent with whom he/she is temporarily living with (Article 1906 CC).
Parental responsibilities regarding **matters of special importance** to the child’s life (such as the determination of his/her centre of life, education, permission to move abroad, the exercise of any work activity, surgical interventions, etc.) are performed jointly by both parents on the same terms as during the marriage, except in cases of obvious urgency, where either parent can act alone (Article 1906 CC).

However, when the joint exercise of parental responsibilities relating to matters of particular importance to the child’s life is found to be contrary to the child’s interests, the court must order that those responsibilities be exercised **only by one of the parents**. In the absence of parental agreement, the court should also determine the child’s residence and visiting rights, in accordance with the child’s interest, including maintaining a close relationship with both parents (Article 1906 CC).

In cases of divorce and legal separation, it will be in the respective process that the regime of the exercise of parental responsibilities with respect to the minor children (cf. above) will be defined, even though it may be changed at any registry office (Article 274-A CRC) or at the court (Article 42 General Regime of the Civil Tutelary Process (RGPTC)).

In the case of de facto separated spouses, the same rules apply as regards the exercise of parental responsibility, but the law has recently created a specific **mechanism for regulating parental responsibility by mutual agreement** (Article 1909 CC). Under this procedure, when parents wish to regulate by mutual agreement the exercise of parental responsibilities of minor children (or to amend an agreement already approved), they may request it at any time at any registry office, (Articles 274-A to 274-C CRC), or apply for the court’s approval of an agreement regulating parental responsibilities, as provided for in the RGPTC.

If the regime of the exercise of parental responsibilities agreed by the parents or defined by the court, as the case may be, is not respected, the Public Prosecution Service or the other parent may request the court to take the necessary steps to enforce it. If parents are called for a conference, they may agree to change the exercise of parental responsibilities, taking into account the interests of the child (Article 41 RGPTC).

If, on the other hand, non-compliance with the agreed or decided on parental responsibility is due to both parents, or to a third party to whom the child has been entrusted, either of them or the Public Prosecution Service may request the court a new regulation of parental responsibilities (Article 42 RGPTC).
8.3. Obligation, sitting and amendment maintenance orders in Portugal and abroad

It is for both parents, in the exercise of their parental responsibilities, to provide for the support of their children (Article 1878 and 1879 CC).

In cases of divorce, legal separation or declaration of invalidity or annulment of the marriage of the parents, the maintenance due to the child and the manner in which it is provided is regulated by parental agreement, subject to approval - which shall be refused if the agreement does not correspond to the minor’s interest (Article 1905 CC). In fact, in cases of divorce and legal separation, the procedure for the exercise of parental responsibility regarding the child will be defined in the respective proceedings, which covers the determination of the maintenance due to the child.

Notwithstanding its designation, maintenance is intended not only for food, but also for education, housing, clothing, health, etc.

If the person who has been obliged to pay parental maintenance does not comply with this obligation, it is possible to resort to the means of effective maintenance provided for in Article 48 of the General Rules on Civil Tutelary Procedure (RGPTC). On the other hand, the child may be entitled to receive this pension through the Guarantee Fund of Maintenance Owed to Children, established under the Social Security (Law No. 75/98, of 19 November, and Decree-Law no. 164/99, of 13 May).

The determination, alteration and collection of maintenance to a citizen residing abroad may also be required, even if that person’s exact location is unknown. In this process, which is carried out through the cooperation between Portugal and other countries, any person residing in Portugal, regardless of their nationality and that of their children, can make the request by filing with the Directorate-General for the Administration of Justice (DGAJ) of an application or form and some documents; the translation of documents written in a foreign language shall be made by DGAJ - more information available at dgaj.justica.gov.pt.

DGAJ cannot disclose the debtor’s addresses obtained during the process. In a first instance, DGAJ seeks that the determination, amendment or collection of maintenance payments is made in an amicable manner, trying to create a consensus between the debtor and the creditor. If no agreement can be reached between the two parties, the case goes to court.

The structure and elements that make up the process of determining, amending or collecting maintenance abroad vary according to the country where the debtor is residing.
The application for the determination, alteration and collection of maintenance is free of charge.

8.4. Travel with minors

The Portuguese Electronic Passport can be requested by any citizen with a valid Citizen Card or Identity Card.

If a passport is required for a citizen under the age of 18, the following documents must be presented:

- valid ID card or Citizen Card of the person under 18 years of age;
- valid identification document of the person exercising parental responsibilities;
- document proving that the person exercising parental responsibility lives legally in Portugal (valid passport or valid visa or residence permit), if such person is a foreigner;
- document issued up to 6 months prior to request proving parental responsibilities (if a passport is requested at the counters of the Foreigners and Borders Service).

It should be noted that minors, when not accompanied by those who exercise parental responsibilities, can only enter and leave the national territory with authorization for this purpose. This authorization must be in a written document, dated and signed by the person exercising legally certified parental responsibilities and in the absence of any time limit, this authorization is valid for six months from its date (Article 23 of Decree-Law No. 83/2000 of 11 May).
9. DEATH AND TESTAMENT

9.1. Drawing up a will in Portugal

With death, the legal personality ends (Article 68 CC).

However, it is necessary to define which person or persons will become the holders of the property legal relations of the deceased person and, consequently, of the property that belonged to him/her - this is called “succession” (Article 2024 CC).

Nevertheless, a person may dispose, after his/her death, of all his/her property or part of his/her property by means of a unilateral and revocable act called the will.

The law makes it possible to insert in a will some non-patrimonial provisions (Article 2179 CC), such as extrajudicial confession (Article 358 CC), adoption (Articles 1853 and 1858 CC), the appointment of a legal guardian (Article 1928 CC) and the rehabilitation of an unworthy successor (Article 2038 CC).

In Portuguese law, the will is essentially characterized for being:

- a **personal** act that cannot be performed through a representative or be dependent on the choice of others (Article 2182 CC);

- a **singular** act, not being possible for two or more people to draw up their will in the same act, thus, the “common will” is prohibited (Article 2181 CC);

- a **freely revocable act**, the testator not being able to waive the right to revoke, in whole or in part, his/her will (Articles 2179 and 2311 CC).

The general principle of the Portuguese law is that all persons that the law does not declare unable to do so, because they have testamentary capacity, can draw up a will (Article 2188 CC). They are thus unable to draw up a will the not emancipated minors, as well as adults with incapacity, but only in cases where the incapacity judgment has so determined (Article 2189 CC).
As regards the form of the will - and apart from the special forms - it can be (cf. Article 2204 CC):

- written by a notary in his/her memo book - the public will (Article 2205 CC);

- written and signed by the testator, or written by someone else at the request of the testator and signed by him/her - the closed will (Article 2206 CC), which must be approved by a notary (Article 2206 CC), although it may be retained by the testator, held by a third party or deposited in a notary’s office (Article 2209 CC).

The intervention of a notary whether in the public will or in the approval of the closed will, obeys in particular the provisions of the Notaries’ Code (CN).

Thus, as a rule, the intervention of two witnesses is necessary in public wills, as well as in the instruments of approval or opening of closed and international wills, although the notary may dispense with the intervention of witnesses in case of urgency and difficulty in obtaining them (Article 67 CN).

As to the documentation to be provided, the identification documents of the testator and of the two witnesses are required. No documentary evidence is needed concerning the references to the land registry, the matrix, the harmonization of the title with the matrix and its registration and the constitution of horizontal property (Article 61 CN).

Reference should also be made to the question of a foreign citizen drawing up a will in Portugal.

According to Portuguese law, the ability to draw up, modify or revoke a disposition on death, as well as the special requirements of the provisions by virtue of the testator’s age, are determined by the nationality law of the testator at the time of the testamentary declaration. (Articles 63 and 31 CC).

On the other hand, as regards the form, Portuguese law provides that the provisions on death, as well as their revocation or modification, are valid if they respect the law of the place where the act is celebrated (in this case, Portuguese law), or the testator’s nationality law, either at the time of declaration or at the time of death. However, if the law of the testator’s nationality at the time of declaration requires, under penalty of nullity or ineffectiveness, the compliance with a certain form, even if the act is performed abroad, this requirement must be respected (Article 65 CC).
If the testator does not understand the Portuguese language, his/her intervention in the notarial act is accompanied by an interpreter of his/her choice, who must verbally transmit the translation of the instrument to the grantor and the declaration of his/her will to the notary (Article 65 CN).

9.2. Procedures to be followed in case of a person’s death in Portugal

The registration of a death occurred in Portuguese territory is mandatory. Therefore, the death of any individual occurring in Portuguese territory must be declared verbally within 48 hours at any civil registry office (Article 192 CRC), and this death declaration must be made by the closest persons, starting with the next of kin who is present at the time of death (Article 193 CRC).

Following the death declaration, the succession process begins with a view to defining which person or persons will become holders of the patrimonial legal relations of the deceased person and, consequently, sharing the property belonging to him or her (cf. Article 2024 CC).

The sharing is made in the conservatories or in the notary’s office, if agreed by the interested parties; it shall be carried out by inventory when there is no agreement of all parties interested in the sharing, as well as in other cases especially provided for by law (Article 2102 CC).

In order to facilitate the succession process, the law provides for certain simplified estate succession procedures within the registry offices (Articles 210-A to 210-R CRC), which aim to promote acts of ownership, registration and guarantee of the compliance with tax obligations relating to hereditary succession and include:

- procedure of identifying the heirs, partition and registrations;
- procedure of identifying the heirs and registrations;
- procedure of partition and registrations.

In this context, the Ministry of Justice also makes available, in order to make this process simpler and faster, the Espaço Óbito. A counter where you can deal with issues related to the death of a family member. In this space you can:

- report the death to the Tax Authority - This communication, to be made by the administrator of the estate, is mandatory, provided that
the person who died has left assets that must be registered and must be made by the end of the third month after the death has occurred;

- **set the date of the heirs qualification** - The heirs’ qualification is a document stating who the heirs are. By doing this, it is also possible to register inheritance property on behalf of all heirs. It is also possible to share assets among the heirs, defining who will inherit what. Heirs must be qualified whenever property (movable or immovable) exists to inherit. There are **four types of qualification**: heir qualification only; the qualification of heirs with registration of assets of the estate; the qualification of heirs with registration of the assets of the estate and partition of assets; registration of the assets of the estate and partition of assets only.

The qualification of heirs must be done by the **administrator of the estate** and is not subject to any specific deadline.

- request support from the **Social Security** or **Caixa Geral de Aposentações** (civil servants special pension scheme);

- report the death to the **ADSE** (public institute for the protection and assistance of civil servants in the disease) if the deceased was a beneficiary, and verify that you are entitled to reimbursement of expenses.

### 9.3. Law on succession applicable to foreigners whose death occurs in Portugal

According to Portuguese law, succession by death is generally governed by the **law of the nationality of the successor** at the time of his/her death (Articles 62 and 31 CC).

The ability to make, modify or revoke a disposition on death, as well as the special form requirements of the dispositions by virtue of the testator’s age, are gauged by its nationality law at the time of the testamentary declaration (Articles 63 and 31 CC).

On the other hand, as regards form, Portuguese law provides that the provisions on death, as well as their revocation or modification, are valid if they respect the law of the place where the act is celebrated - in this case, Portuguese law -, or the testator’s nationality law, either at the time of the declaration or at the time of death. However, if the law of the testator’s nationality at the time of the declaration requires, under penalty of nullity or ineffectiveness, compliance with a certain form of proceeding, even if the act is performed abroad, this requirement must be respected (Article 65 CC).
10. REGISTRATIONS – WHAT TO REGISTER AND HOW

Registration is a form of advertising legal situations. There are different types of registration depending on the legal situation in question. There are records of a civil nature, such as birth registration, marriage or death records and other related to them or altering them, such as filiation, sex change or inheritance alterations, the property registrations, such as the land register and car registration, and records of a commercial nature, such as the registrations of legal persons. There is also the criminal record and the Central Register of the Effective Beneficiary.

Most of these records are currently available in a simple, quick and particularly free of red tape - in most cases just a click away. The Ministry of Justice, through the Institute of Registries and Notary (IRN), the Directorate-General of Justice Administration (DGAJ) and the Portuguese Institute of Industrial Property (INPI), provides a range of online and physical services, which facilitate the procedures in this field.

The certificates related to records, i.e. documents attesting to registered situations, may be requested and viewed in person at the respective services, in the Espaços Registos or at the Lojas do Cidadão, or via the websites justica.gov.pt or eportugal.gov.pt.

Civil Registry

Birth is the first fact of life to be registered. Birth registration should be made shortly after birth, preferably at the maternity or hospital where the child was born or where the mother was transferred to after birth.

For this, the service Nascer Cidadão was created and made available in all public and some private hospitals and maternity hospitals. Through this service it is also possible to request the Citizen Card of the new-born at the time of the registration.

If birth registration is not possible at the hospital or maternity hospital, it can be done online at justica.gov.pt or at any civil registry office.

Marriage and also divorce is registered and endorsed to the birth registration.
The death of any individual occurring in Portuguese territory must be declared verbally within 48 hours from the date of death, or the corpse is found or autopsied. This registration is made in a Civil Registry Office, based on a mandatory declaration, with the purpose of recording the facts related to the death of the individual. After the death is registered, a free certificate of the death registration is provided as a burial guide.

Law No. 38/2018, of 7 August, establishes the right to self-determination of gender identity and expression and the right to the protection of the sexual characteristics of each person, allowing the registration of sex reassignment to persons over 16 years old that meet certain specifically laid down conditions.

The procedure allows changing the mention of sex and first name in the civil register, at the request of the person concerned by request, in any registry office.

It is possible to make the registration of a will in the Central Testament Register.

This central register, which is of the responsibility of the Central Registry Office, contains information on public wills, instruments of approval, deposit and opening of closed and international wills, deeds of revocation of wills and renunciation or repudiation of inheritance or legacy, as well as the date on which they were entitled and the indication of the entity with which they were entered into, contributing to the will of the testators being known and respected.

Land Registry

The land registry has as main purpose the advertising of the legal situation of the real estate, with a view to securing the real estate legal trade. The purchase and sale of real estate, as well as other property rights, are recorded.

It is possible to access this register and perform all the relevant acts at any Land Registry Office, at the Espaços Registros or online at predialonline.pt or at justica.gov.pt.

Vehicle registration

The purpose of the vehicle registration is essentially to publicize the legal situation of motor vehicles and their trailers aiming at the safety of the legal trade. For the purpose of registration, motor vehicles are motor vehicles and their trailers which, under the terms of the Highway Code, are subject to registration.
Through the Online Vehicle service it is possible to request various acts of registration on vehicles and their trailers over the Internet and subsequently receive, without travel, the Certificate of Registration/Unique Car Document. In this website it is possible to:

- submit the online application for registration of the transfer of motor vehicle ownership (for example, to register the new owner of a car following the purchase of a new or used vehicle) and other acts of registration on vehicles and their trailers;

- consult the status of the application after it has been placed;

- submit the application for the permanent certificate of vehicle registration;

- consult the permanent certificate of the vehicle registration.

Access the car register online at automovelonline.mj.pt or at justica.gov.pt.

The registration can also be made at an Vehicle Registry Office or at the counters of the Espaço Registos or online at automovelonline.mj.pt or at justica.gov.pt.

**Commercial registration**

With regard to the companies, the Commercial Registration is particularly relevant, as it purports to advertise the legal situation of sole traders, of commercial companies, civil companies under a commercial form and individual establishments of limited liability, bearing in mind the security of the legal trade. Through the commercial register, a number of events can be recorded, from the moment the company is set up to the moment of its extinction.

Commercial registration is available online at justica.gov.pt. Alternatively, you can request the acts of commercial registration in person, in any Commercial Registry Office or in the Espaços Registos.

**Criminal record**

The criminal record contains all criminal records of citizens over 16 years of age.
The criminal record certificate contains information on:

- criminal convictions handed down by Portuguese courts;
- decisions of Portuguese courts applying security measures;
- criminal decisions of foreign courts, communicated to Portugal under international agreements, which concern Portuguese or foreign nationals residing in Portugal.

Any person over 16 years old may request the Criminal Record if it is their own criminal record. Anyone over the age of 18 may request the criminal record of another person, as long as he or she is authorized to do so. The request in this case has to be made in person and the authorization has to be presented to the services.

This certificate may be requested, and viewed online at registocriminal.justica.gov.pt, in person or, if the person resides abroad, by post or email. In person, it can be requested at one of the branches of the Criminal Identification Services (available also at the Lojas do Cidadão) or at the Central Units or Proximity Divisions of the County Courts.

The certificate costs 5 € if it is issued on paper, but the online consultation is free of charge.

This document is valid for 3 months.

Central Registration of the Beneficial Ownership

The Central Registration of the Beneficial Ownership (RCBE) is intended to identify all persons who control a company, fund or other legal entity. The RCBE declaration must be completed by all entities incorporated in Portugal or wishing to do business here.

The beneficial ownership can be made at rcbe.justica.gov.pt or on the premises to be indicated on the IRN – Institute of Registries and Notary webpage, when linked to an application for commercial registration, or by an entry in the Central Register of Legal Persons, by appointment only, when available.

The registrations may also be viewed online.

More information is available at rcbe.justica.gov.pt.

Where translation is required in order to proceed or base an act of registration, this one may be carried out by the following services or entities:
- Portuguese Notary Office;
- Central Registry;
- Civil Registry;
- Portuguese consulate in the country where the document was issued;
- Consulate representing, in Portugal, the country where the document was issued;
- Chambers of Commerce and Industry, recognised in accordance with the Decree-Law 244/92 of 29 October;
- Lawyers and Solicitors.

It may also be made by a qualified translator, and certified by any of the above-mentioned departments or entities.

May not act as a translator the person to whom the translated document relates, or whenever the translation refers to his/her spouse or to other family members referred to in Article 68 (1) (e) of the Notary Code.
11. WHAT TO DO IF YOU ARE VICTIM OF A CRIME

A crime victim is a natural person who has suffered damage, including an attack on his or her physical or mental integrity, an emotional or moral damage, or property damage, directly caused by action or omission in connection with a crime committed by another person. Family members of a person whose death was directly caused by a crime and who suffered damage as a result of such death, under the law, are also victims.

Anyone can be victim of a crime.

**Jurisdiction to investigate** a crime lies with the Public Prosecution Service during the investigation phase, although there is a delegation of competence to the criminal police bodies, according to their competence.

To report the crime you are a victim of, you should go to any criminal police agency (e.g. PSP, GNR or PJ) or to the public prosecution services. You only have to report the facts. The complaint may also be made in writing, by post or by email to the Public Prosecution Service, or by the Electronic Complaint System, available at [qe.pj.pt](http://qe.pj.pt) or at [queixas-electronicas.mai.gov.pt](http://queixas-electronicas.mai.gov.pt).

In the case of a complaint made in presence, the entity to which you make the complaint will collect your testimony and grant you the **status of victim**, allowing you, from then on, to enjoy a set of rights provided by law, namely:

- the right to information;
- the right of assistance;
- the right of protection;
- the right to actively participate in the criminal proceedings, including the right to collaborate with the competent police or judicial authorities, providing information and providing evidence deemed necessary for the discovery of the truth and to the adequate judgement of the case.
You may be granted the **status of a particularly vulnerable victim**, whether you are a Portuguese national or a national of another State, if you are a victim whose special fragility results, in particular, from your age, health or disability, as well as from the type, degree and duration of victimization that have resulted in injuries with serious consequences for your psychological balance or conditions of social integration. Victims of violent crime and especially violent crime are always considered to be especially vulnerable victims.

You can resort to a **crime victim support association** to feel more supported. The Portuguese Association for Victim Support (APAV) is the victim support association with the largest geographical representation in the national territory and with a generalist vocation in relation to different types of crime. However, there are a number of other non-governmental crime victim support organizations, some targeting specific types, such as domestic violence or human trafficking.

When granting the **Victim Status**, you will be given information on the most representative victim support associations in your geographical area, as well as their contacts.

Depending on the crime you suffered, your participation in the process may differ:

- **In public crimes**, it is enough that the judicial or police authorities report it, or the optional denunciation of anyone, to start the criminal procedure and the investigation. For example, public crimes include murder, domestic violence, kidnapping, abduction, robbery. In this type of crime the process runs, even if the victim does not report it or want to actively participate assuming a procedural status.

- **In semi-public crimes**, for criminal proceedings to be initiated, a criminal complaint must be submitted, as a rule, by the victim himself/herself or by his/her legal representative or successor. The complaint must be made within 6 months of the date on which the victim or the right holder becomes aware of the fact and who its perpetrators were.

  The investigation begins only after the complaint and the withdrawal is admissible. Semi-public crimes are, for example, theft, breach of trust, violation of the maintenance obligation, offense to physical integrity.

- **In private crimes**, in order for the proceedings to begin, a complaint must be filed and the injured party constituted as party to the proceedings, actively participating in them. Examples of private crimes are defamation, libel, fraud to obtain food, beverages or services, credit or guarantee card abuse.
You can resort to legal advice or legal aid, for more information see the chapter on legal aid.

If you have been the victim of a semi-public crime against persons or property or of a private crime punishable by imprisonment of no more than five years or with a penalty other than imprisonment, such as bodily injury, libel, theft, damage, swindling, can benefit from a solution that goes through criminal mediation. This constitutes an alternative means of dispute resolution arising from the commission of certain crimes. Through the help of a specially certified professional for mediation - the criminal mediator - the approximation between the accused and the offended is promoted, who are thus supported in an attempt to actively find an agreement to repair the damage caused by the wrongful act and contribute to the restoration of social peace.

Anyone who suffers damages resulting from the commission of a crime is entitled to compensation from the author of the crime. Compensation should be claimed by the victim, for that effect informing the police or the prosecutor, by means of an application, during the investigation phase.

If you have been the victim of a violent crime or of domestic violence you may be entitled to an advance on compensation from the State.

The Crime Victims Protection Commission is the body of the Ministry of Justice responsible for receiving, analysing and deciding compensation claims to be granted by the State.
12. PORTUGUESE JUSTICE SYSTEM

12.1. Framework

The Portuguese Republic is a democratic State based on the rule of law. Everyone is guaranteed access to the law and the courts in order to defend those of his rights and interests that are protected by law, and justice may not be denied to anyone due to lack of sufficient financial means.

Subject to the terms of the law, everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority.

Everyone has the right to secure a decision in any procedure in which he is intervening, within a reasonable time limit and by means of a fair process.

For the purpose of defending personal rights, freedoms and guarantees and in such a way as to secure effective and timely judicial protection against threats thereto or breaches thereof, the law shall ensure citizens judicial proceedings that are characterised by their swiftness and by the attachment of priority to them.

The Constitution of the Portuguese Republic defines the principles that constitute the basis of the judicial organization and functioning of the courts in Portugal.

The courts are sovereign bodies competent to administer justice in the name of the people. In administering justice, the courts are responsible for ensuring the defence of those citizens’ rights and interests that are protected by law, repressing breaches of democratic legality and deciding conflicts between interests, public and private. In the exercise of their functions, the courts have the right to the assistance of the other authorities.

The Constitution also provides for the possibility of non-jurisdictional instruments and forms of settling conflicts. These are embodied in alternative dispute resolution means, available to citizens.

The following are structural actors in the system:

The Judges - law enforcers by nature, only decide according to the Constitution and the law and are not subject to any orders or instructions, except for the duty to comply with decisions rendered on appeal by the
higher courts. They cannot be held responsible for their decisions, save for the exceptions laid down in law.

The Public Prosecution Service - is an entity that represents the State, defends the interests laid down by law, participates in the implementation of the criminal policy defined by the sovereign bodies, exercises penal action in accordance with the principle of legality and defends the democratic legality, in accordance with the Constitution, its statutes and the law. It has its own statute and autonomy vis-à-vis other central, regional and local authorities under the law. It is bound to legality and objectivity criteria, being exclusively subjected to the directives, orders and instructions provided for by law.

The Lawyers - are liberal professionals of the forum responsible for defending the rights, interests or individual guarantees entrusted to them. They have to carry out the specific acts provided for by law, in particular the exercise of their legal mandate and legal advice. In the exercise of their activity, they must act with total independence and technical autonomy and in an exempt and responsible manner, being only bound by the legality criteria and the deontological rules of the profession.

The Solicitors - are liberal professionals involved in the administration of justice, exercising judicial powers in the cases and within the limits laid down by law. In carrying out their activities, they must act with complete independence and technical autonomy and in an exempt and responsible manner, being only bound by the legality criteria and the deontological rules of the profession.

The Enforcement Agents – are liberal professionals competent to: ensure due diligence in the enforcement procedure, make in sundry notifications and carry out evictions. To this end, they may determine the location of persons and of the assets belonging to the debtors, seize and attach their assets and sell them, and deliver their proceeds to the creditors. They have exclusive jurisdiction to deal with Extrajudicial Pre-Enforcement Procedures, PEPEX (expeditious procedures submitted by the legal representatives or creditors, with the purpose to establish the location and assets of the debtors against whom there is a valid enforcement title, and promote compensation for such debts).

The Court Officials – are professionals who ensure, in the courts’ registry and in the registry of the Public Prosecutors’ Office, the correspondence and the regular processing of the cases, in accordance with the law and under the remit of the respective magistrates.
12.2. Dispute resolution means

12.2.1. State courts

In Portugal, there are several categories of courts.

The Portuguese Constitution stipulates that, in addition to the Constitutional Court, which is the highest constitutional justice body, and the Court of Auditors, which is the senior body for the scrutiny of the legality of the public expenditure, the Portuguese judicial organisation comprises the category of the Law Courts and the category of the Administrative and Tax Courts.

Moreover, the Portuguese Constitution also provides the possibility of creating maritime courts, arbitration tribunals and justices of the peace.

The courts of law are general courts in civil and criminal matters and have jurisdiction in every area that is not allocated to other judicial orders. As they are courts competent to decide most disputes between citizens and/or companies, they have the highest number of cases in Portugal.

The category of the law courts follows a hierarchy. This hierarchy means that, as a rule, decisions of the first instance courts may be appealed to the courts of second instance and from these to the highest jurisdictional court.

At the top of this hierarchy is the Supreme Court of Justice, which, as a rule, hears on appeal the causes whose value exceeds the ceiling set for the Courts of Appeal, currently fixed at 30,000 €. The Supreme Court of Justice has jurisdiction throughout national territory.

Next, the Courts of Appeal, which are, as a rule, the courts of second instance. These courts hear causes whose value exceeds the ceiling set for the first instance courts, currently fixed at 5000 €.

There are five Courts of Appeal:

- The Court of Appeal of Lisbon;
- The Court of Appeal of Porto;
- The Court of Appeal of Guimarães;
- The Court of Appeal of Coimbra;
- The Court of Appeal of Évora.
The Courts of Appeal are, as a rule, competent in the area of their respective jurisdiction.

Finally, the county courts, which are, as a rule, the courts of first instance. Usually, the county courts have jurisdiction in the area of their respective counties.

To that end, the Portuguese territory is divided into 23 counties.

The county courts in turn are divided into general, specialized or proximity jurisdictions.

The **specialised jurisdiction** divisions are:

- Central civil;
- Local civil;
- Central criminal;
- Local criminal;
- Local misdemeanour;
- Criminal pre-trial inquiry;
- Family and minors;
- Labour;
- Commerce;
- Enforcement.

There also are courts of **specialised jurisdiction** and **extended territorial jurisdiction**:

- industrial property court;
- court of competition, regulation and supervision;
- maritime court;
- court for the enforcement of sentences;
- central criminal pre-trial inquiry court.
These specialised courts have extended territorial jurisdiction (broader jurisdiction than the county in which they are seated) and only hear cases related to certain matters (irrespective of the applicable form of procedure).

The administrative and tax courts are competent to hear contested actions and appeals on disputes arising from administrative and tax legal relations.

Thus, in most cases, they are courts with jurisdiction to hear the cases that bring citizens and companies against the State and other public entities, such as local authorities, public institutes and professional bodies.

The administrative courts have jurisdiction to hear issues, such as: the annulment or invalidity of administrative acts; the imposition of acts due; declaration of illegality of standards issued under administrative law provisions; compensation for damages caused by legal persons and by senior managers or their employees in public office; consideration of questions concerning the interpretation, validity or performance of contracts; and the obligation of the Administration to provide information, allow for consultation of documents or draw up certificates.

On their turn, the tax courts hear, for example, actions against the liquidation of tax revenue and acts carried out by the competent authority in tax enforcement proceedings; actions challenging decisions imposing fines and ancillary penalties in tax matters; declaration of illegality of regional or local administrative standards issued in tax matters; and the obligation of any tax authority to provide consultation of documents or procedures, to draw up certificates and to provide information.

Just like the category of the law courts, the category of the administrative and tax courts is also organised hierarchically.

Thus, the highest body of this jurisdiction is the Supreme Administrative Court, which has its seat in Lisbon and has jurisdiction throughout Portuguese territory. Its main purpose is to hear appeals against decisions rendered by the Administrative Central Courts.

In turn, the courts of second instance, in the administrative and tax jurisdiction are, as a rule, the Administrative Central Courts, the main function of which is to hear appeals against decisions rendered by the district administrative and the tax courts.

There are currently two Administrative Central Courts: The North Central Administrative Court, and the South Central Administrative Court.

The South Central Administrative Court, which has its seat in Lisbon, exercises its jurisdiction over all the areas of jurisdiction allocated to the District Administrative and Tax Court of Lisbon and to the Administra-
tive and Tax Courts of Almada, Beja, Castelo Branco, Funchal, Leiria, Loulé, Ponta Delgada and Sintra.

The North Central Administrative Court, which has its seat in Porto, exercises its jurisdiction over all the areas of jurisdiction allocated to the Administrative and tax Courts of Aveiro, Braga, Coimbra, Mirandela, Penafiel, Porto and Viseu.

Last but not least, the courts of first instance, in the administrative and tax jurisdiction are, as a rule, the district administrative courts and the tax courts. When they operate together, they are called “administrative and tax courts”.

12.2.2. Alternative dispute resolution means

Alternative dispute resolution means are out of court mechanisms of proximity to the citizen, through which disputes can be resolved quickly and where the parties are invited to find a solution to the problem opposing them.

The use of these means makes it possible to settle disputes on the margins or in complementarity with the courts in a less bureaucratic manner, with gains in speed, efficiency and reduced costs, and the involvement of the parties favours the conditions for them to maintain their relationship after resolution of the quarrel.

These include arbitration, the justices of the peace and mediation.

Arbitration

Arbitration is a form of alternative dispute resolution in which it submits, by agreement of the parties or by law, depending on whether it is voluntary or necessary arbitration, the decision on a particular dispute of patrimonial nature, to arbitrators who, although being independent, impartial and specially qualified persons, are not magistrates.

It is possible to resort to arbitration to:

• solve conflicts that have already occurred (by signing an arbitration agreement)

• avoid future conflicts (by including an arbitration clause in a contract).
Arbitration may take place in different areas, such as, for instance:

- **arbitration in civil and commercial disputes** – settles disputes related to property interests and disputes not involving property interests, provided that the parties enter into an agreement over the disputed right;

- **arbitration of consumer disputes** - settles disputes between those to whom goods, services or rights for non-professional use are provided by a person who pursues an economic activity aimed at obtaining a benefit;

- **arbitration related to motor vehicles** – settles disputes arising from issues involving motor vehicles – repairs, accidents;

- **arbitration in the insurance sector** - settles disputes related to insurance contracts;

- **arbitration for industrial property, domain names and companies’ names** - settles disputes in the scope of industrial property, domain names and companies’ names;

- **arbitration on administrative disputes** – settles disputes related to administrative contracts, non-contractual civil liability, administrative acts, public employment (whenever unavailable rights are not at stake and when they do not arise from a work accident or an occupational disease) and public procurement;

- **arbitration of tax disputes** – settles disputes related to the declaration on the illegality of acts of tax settlement, of the reverse charge, of the withholding tax and of the payment on account and declaration on the unlawfulness of the taxable amount, where it does not give rise to the settlement of any tax, of the measures to determine the taxable amounts, and of the acts setting the equity values;

- **arbitration on investments** – settles disputes arising from the interpretation and application of investment contracts.

Arbitration in civil and commercial disputes tends to be confidential.

Those who resort to arbitration may follow one of two ways:

The parties themselves may, on their own initiative, **choose the arbitrator** that will decide the dispute and impose a binding decision or, alternatively, submit the dispute resolution to **arbitration centres**, which are entities created by law or authorized by the Ministry of Justice, competent to resolve certain types of disputes.
See the list of arbitration centres authorized by the Ministry of Justice to administer arbitrations in Portugal at dgpj.justica.gov.pt.

In addition to providing information, arbitration centres provide citizens and businesses to resolve disputes through mediation, conciliation and, if the parties cannot reach agreement on either of these, via arbitration.

Arbitration centres may have generic competence or competence specialized in certain areas and operate according to their competence (geographical area), the subject matter (type of dispute which they can solve) and, in certain cases, on the amount (limit amount of the disputes).

The Ministry of Justice supports, technically and financially through DGPJ, certain Arbitration Centres in areas of sensitive social importance and given the public interest pursued.

The advantages of resorting to an Arbitration Centre are the following:

- easiness, because the process is less bureaucratic, and to have a lawyer is not mandatory;
- speed, because given the simplicity of the procedure, it is possible to solve the dispute in the interests of the parties, in a timely manner;
- security, to the extent that the decision of the Arbitral Tribunal is equivalent to that of a court decision;
- reduced costs.

Location of the arbitration centres supported by the Ministry of Justice, and more detailed information at dgpj.justica.gov.pt.

**Mediation**

Mediation is one of the alternative dispute resolution means, which means that Mediation disputes are, as a rule, settled out of court.

In Mediation, the parties, assisted by an impartial third party who is the mediator, shall endeavour to reach an agreement and resolve the dispute between them.

Unlike a judge or an arbitrator, the mediator has no decision-making power and therefore does not impose any decision or judgement. As an impartial third party, the mediator guides the parties and helps them establish the necessary communication so that they may find by themselves
the basis for the agreement that will put an end to the conflict. The parties are thus responsible for the decisions they make with the help of the mediator.

Mediation, by allowing relations between litigants to be maintained, is, for example, particularly suited to resolving family, work and neighbourhood disputes.

Mediation may be specially usefulness to citizens, namely regarding:

- **family disputes**, in particular those relating to divorce, legal separation, alteration and non-fulfilment of the exercise of parental responsibilities, the assignment and alteration of maintenance. For these you may use the Public System on Family Mediation (SMF), managed by the Ministry of Justice, assessing to dgpj.justica.gov.pt;

- **labour disputes**, arising from the work contracts that do not contend with unavailable rights or accidents at work, namely disputes related to promotions, changing workplace, changing working hours work, job change, booking vacations, training, safety, hygiene and health, student worker status, etc... For these you may use the Public System on Labour Mediation (SML), managed by the Ministry of Justice, assessing to dgpj.justica.gov.pt;

- **disputes in civil and commercial matters** of a patrimonial nature, which can be subject to a transaction. For these you may use public mediation services provided by the Justices of the Peace. Search for a Justice of the Peace at dgpj.justica.gov.pt;

- alternatively, you may also use any mediator who may exercise privately. See the list of private mediators organized by the Ministry of Justice at dgpj.justica.gov.pt;

- **litigation resulting from the commission of certain offenses** - in particular, offenses against simple physical integrity or negligence, threat, defamation, insult, theft, damage or fraud - defendant and offender may request the prosecution responsible for investigating criminal mediation, with a view to promoting the approximation between them and supporting them in their attempt to find an agreement to redress the damage caused by the unlawful act and to contribute to the restoration of social peace.

The Public System on Penal Mediation (SMP) is managed by the Ministry of Justice. Look for additional information on its operation at dgpj.justica.gov.pt.
The Ministry of Justice, through DGPJ, is responsible for the management of the public mediation systems. More information can be found at dgpj.justica.gov.pt.

Justices of the Peace

The Justices of the Peace are courts with their own functional and organisational characteristics whose procedures favour simplicity, orality, speed and informality, as well as the fair composition of disputes by agreement between the parties.

The Justices of the Peace are competent to hear and decide on civil declarative actions whose value does not exceed 15.000€ (except those involving family law matters, succession and labour law).

The proceedings that may be brought before the Justices of the Peace, pursuant to Article 9 of the Law 78/2001, of 13 July, as amended by Law 54/2013 of 31 July, are the following:

- actions related to compliance of obligations, other than those that have, as object, a financial obligation and which concern adherence contracts (example: contracts, unilateral transactions, business management, etc.);

- actions related to the delivery of movable things (example: actions for the service of documents);

- actions resulting from the rights and duties of the co-owners, whenever the respective Assembly has not acted on the obligation to undertake arbitration for the settlement of disputes between co-owners or between co-owners and the administrator (example: payment of roof repairs, general water facilities, lifts);

- actions for the settlement of disputes between property owners related to provisional forced passenger-ways, natural drainage of water, defensive water works, communion of ditches and live hedges; opening of windows, doors, balconies and similar works; water dripping, planting of trees and bushes, building of walls and partitions;

- claims, possession actions, usucapio, accession and actions for division of common property;
• actions related to the right of use and administration of joint ownership, surface area, usufruct, use and housing, and the right in rem in periodic housing (example: action for division of common property);

• actions related to urban rent, except for eviction (example: action for lack of payment of rent);

• actions related to contractual and non-contractual civil liability (example: actions resulting from road traffic accidents, actions resulting from damage caused by things, animals or activities);

• actions related to contractual default, except work contract and rural leases;

• actions related to the general warranty of obligations (example: action of invalidity, actio pauliana, etc.);

• actions related to civil compensation claims, where no criminal claim has been submitted or after its discontinuance, stemming from the following offences: bodily injury, negligent bodily injury, libel, slander, theft, damage, change of landmarks, fraud to obtain food, beverages or services.

Although representation by a lawyer is not mandatory in cases running in the justices of the peace, the parties may, if they so wish it, be accompanied by a lawyer, a trainee lawyer or a solicitor. However, the constitution of a lawyer is mandatory in cases specifically provided for by law (e.g. one of the parties to the illiterate or ignorant of the Portuguese language) and when an appeal is lodged against the decision rendered.

In the Justices of the Peace, the proceedings begin with the submission of the application at the court secretary, verbally or in writing and it may submitted by the applicant itself.

Once the defendant is notified, he/she is invited to settle the dispute through mediation, which is preceded by a pre-mediation session, which will always occur provided that neither party does not discard this possibility.

If the case is resolved through mediation, it ends with the approval of the agreement by the Judge of Peace, having the value of a sentence.

If the process is not resolved through mediation, it ends with the intervention of the justice of the peace through conciliation, at a time prior to the trial or decision at the trial hearing.

Decisions issued by the Justice of the Peace have the same value as those issued by the courts of first instance, which may be appealed
in cases where the value exceeds half the value of the jurisdiction of the court of first instance (i.e. from 2.500 €).

In terms of costs to the parties, the use of the Justices of the Peace is subject to a fee of 70 €, borne by the losing party, and the judge of the peace, depending on the decision, may also decide to divide this amount between the plaintiff and the defendant.

If agreed during the mediation, the amount to be paid is 50 €, divided by both parties.

In sum, the use of the Justices of the Peace offers the parties the following advantages:

- focus on informality and simplicity of procedures;
- favours dispute resolution by agreement between the parties, through mediation and conciliation;
- disputes are resolved more closely to the citizen and companies, as the parties actively participate in the process, thus contributing to solving your problem;
- the process is fast (has an average duration of 3 months) and has a reduced cost.

Additional information at dgpj.justica.gov.pt.

### 12.2.3. Average time of the clearance rate

The average time of the clearance rate at the first instance courts, by procedural area, can be observed in the following table:
12.2.4. How much does it cost to use the justice system?

Judicial proceedings have a cost. Procedural costs are the amount paid by the justice service that the courts perform. All the citizens may resort to justice, but this entails the payment of a set of fees — the court fees (value to be paid for the procedural impulse), the charges (expenses) and the costs of the party (costs incurred in the course of the proceedings). These values must be paid whenever the citizen or company is not entitled to legal aid.

These values can be calculated, by procedural type, at justica.gov.pt in the court fees simulator.

12.2.5. When is representation by a lawyer required?

Any person has the right to be accompanied by a lawyer before any authority. Legal representation corresponds to the exercise of powers of representation by legal professionals (lawyers, trainee lawyers or solicitors) in the technical conduct of the proceedings assigned to them by way of a legal mandate. Even though the appointment of a legal representative is always allowed, the law requires on several occasions that a lawyer should assist a party to an action. This requirement preserves the proper administration of justice and protects the parties’ own interests by ensuring that they are given advice by a professional and that they are not harmed for not knowing the procedural formalities. These cases vary according to the nature of the case. Therefore:

a) in the civil procedure, the requirements vary between the declarative and the enforcement actions. In the enforcement actions, legal representation is required for enforcements of more than 30,000 € or more than 5,000 €, if the enforcement action follows the terms of the declarative action. These rules also apply to the administrative procedure. In declarative actions, legal representation is mandatory:

- in causes with a value of more than 5,000 €;
- in causes where an ordinary appeal is always admissible;
- in the appeals and in the causes lodged at the appeal courts.

b) In the justices of the peace, legal representation is compulsory when the party is blind, deaf, mute, illiterate, and unaware of the Portuguese language or, if for any other reason, is in a position of manifest inferiority. It is also compulsory at the appeal stage.
c) In the **criminal procedure**, the defendant shall be assisted by a lawyer:

- in the questioning of the detained or arrested defendant;
- in the questioning by a judicial authority;
- in the pre-trial inquiry and at the hearing;
- in any procedural act, other than the constitution of defendant, whenever the defendant is blind, deaf, mute, illiterate and unaware of the Portuguese language, under the age of 21, or if questions are raised on his lack of criminal liability or diminished liability;
- in ordinary or extraordinary appeals;
- when statements are made for future memory;
- at the trial hearing held in the absence of the defendant and (viii) in all other cases provided for by law.

In most cases, the **represented person chooses the legal representative** personally and freely, but there are exceptions. Thus, for example, when the represented person benefits from legal aid, through the lawyer’s appointment model, the Bar appoints the legal representative, after receiving the person’s request.

Even when legal representation is voluntary or compulsory, only Law graduates enrolled in the **Bar** and the solicitors enrolled in the **Chamber of Solicitors and Enforcement Agents** may exercise the legal mandate, though the latter may only do so before the first instance courts in the cases where there is no obligation to appoint a lawyer.

A **legal mandate** may be granted in any of the following ways:

- in sundry public instrument;
- private document;
- oral statement on any due diligence carried out in the procedure.

In the first two cases, the legal mandate is given by means of a document called a **proxy**, which is a unilateral act, whereby the person gives the legal representative the power of attorney.
The legal mandate confers on the legal **representative powers of attorney in all procedural acts**, even before the courts of appeal, with the exception of those, which, being personal acts, extinguish in whole or in part the proceedings (such as the confession and the withdrawal of the application, discontinuance of the proceedings and the transaction). The legal representative may only perform the latter where special powers have been conferred on him.

### 12.2.6. Legal aid and access to law

Justice cannot be denied due to lack of economic means: everyone should have access to the courts for the defence of their rights. This is a right provided for in the European Convention on Human Rights, in the Charter of Fundamental Rights of the European Union and in the Constitution of the Portuguese Republic. The current legal regime on the access to law —, which has the purpose to ensure that no one is deprived, by reason of his social or cultural status, or due to lack of economic means, of knowing, exercising or defending his rights - encompasses two methods:

- **legal information**, through actions designed to make the law and the legal order known;

- **legal protection**, granted to specific or probable legal issues or causes in which the user has an interest of his own, concerning rights directly harmed or likely to be harmed.

**Legal protection**, to which natural and legal persons are entitled, covers two distinct figures, the **legal advice** and the **legal aid**, and can be granted to nationals and citizens of the European Union and to foreigners and stateless persons residing in a Member State of the European Union that can prove that they are in a situation of economic insufficiency. In the case of foreigners without a valid residence permit in a Member State of the European Union, the right to legal protection is only recognised to the extent that the same is granted to the Portuguese people by the laws of their respective States.

This regime is based on a triangular relationship. The decision to grant legal protection is entrusted to the **Social Security Institute**, which assesses the economic conditions on which its attribution to the citizens depends, to the **Bar**, which appoints the Lawyers, and to the **State**, that is responsible for financing the regime, through the budget managed by the Ministry of Justice.
The assessment of the **economic insufficiency** of natural persons is made taking into account the average monthly income of the household, calculated in accordance with the arithmetical formulae set out in the Annex to the **Law on the Access to Law and to the Courts**. All the household income, including pensions and housing support, are considered in this assessment. Given the complexity of these mathematical operations, the Social Security has available online, without the user having to identify himself, a **simulator** to determine whether or not the applicant is entitled to legal protection at **seg-social.pt**.

If the economic situation of the beneficiary or of his household changes in such a way that the support can be dispensed with, the legal protection shall be withdrawn.

Even though the Law on the Access to Law and to the Courts refuses to grant legal protection to for-profit legal persons, the Constitutional Court’s judgment 242/2018, of 7 June, declared the unconstitutionality of this provision, with general binding force. Therefore, **for-profit legal persons** may be **entitled to legal protection** in the form of legal aid if it is found that they are in a situation of economic insufficiency.

**Legal advice** is the technical clarification of the law applicable to specific issues or cases and may be provided in legal advisory offices or in law firms that adhere to the system on the access to law. It must refer to the interests or rights of the person requesting it, be they interests or rights that have been harmed or that are likely to be harmed.

Legal advice also includes the performance of out-of-court due diligences, which derive directly from the legal advice provided and deemed essential to the clarification of the issue referred.

**Legal aid**, which has the purpose to ensure that those who do not have sufficient economic means to bear the burden of a legal procedure are protected, comprises the following:

- exemption from court fees and other charges related to the procedure;
- appointment of a lawyer and payment of his fees;
- payment of the public defence counsel fees;
- payment in instalments of the court fees and other related charges;
- appointment of a lawyer and payment, in instalments, of his fees;
- payment in instalments of the public defence counsel fees;
• assignment of an enforcement agent.

Legal aid may be requested for cases that run before any court (regardless of the form of procedure), a justice of the peace or an alternative dispute resolution structure, for cases related to administrative infringements, as well as for a number of proceedings in the Civil Registry, such as:

• alimony for children older over legal age or emancipated;

• assignment of the family’s home residence;

• conversion of judicial separation of persons and property into divorce;

• separation and divorce by mutual consent.

Legal aid may be requested, free of charge, at any front-office of the social security service, by electronic mail, by fax, in person or by post, and must be accompanied by the documents confirming the economic situation of the applicant.
13. OVERVIEWS OF THE CIVIL AND CRIMINAL JUSTICE

13.1. Civil Justice Overview (1st instance) – 2018

**CIVIL JUSTICE OVERVIEW**

<table>
<thead>
<tr>
<th></th>
<th>Clearance rate*</th>
<th>Disposition time**</th>
<th>Average duration of completed cases/procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declarative actions</td>
<td>101.4%</td>
<td>311 days</td>
<td>11 months</td>
</tr>
<tr>
<td>Payment orders</td>
<td>93.4%</td>
<td>134 days</td>
<td>3 months</td>
</tr>
<tr>
<td>Enforcement actions</td>
<td>174.9%</td>
<td>989 days</td>
<td>53 months***</td>
</tr>
</tbody>
</table>

*Ratio of the total volume of completed cases to the total volume of new cases. ** Time it would take to complete all pending cases.

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**New civil cases** (179,918; 64.5%)

- New civil cases (179,918; 64.5%)
- Completed cases (288,443)

**New labour cases** (48,498; 17.4%)

- Completed cases (142,588)
- Court judgement (213,335; 74.0%)
- No need to adjudicate/loss of interest (42,181; 14.6%)
- Other reasons (32,927; 11.4%)

**New tutelary cases** (50,653; 18.1%)

- Completed cases (41,653; 35.0%)
- Apposition of enforcement formula (105,028; 78.9%)
- Other enforcement orders (56,763; 47.8%)

**New payment orders** (142,588)

- Completed payment orders (133,113)
- Waiver (4,219; 3.2%)
- Other reasons (23,866; 17.9%; 14,157 by opposition; 10.6%)
- Condemnatory decision (20,423; 17.4%)

---

**Total new cases** (279,069 cases)

- New civil cases (179,918; 64.5%)
- New labour cases (48,498; 17.4%)
- New tutelary cases (50,653; 18.1%)
- New payment orders (142,588)

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**DECLARATIVE PHASE**
CIVIL JUSTICE OVERVIEW

(1st instance) – 2018

Clearance rate
Disposition time
Average duration of completed cases/procedures

Declarative actions
101.4%
311 days
11 months

Payment orders
93.4%
134 days
3 months

Enforcement actions
174.9%
989 days
53 months

New civil cases (179,918; 64.5%)
New labour cases (48,498; 17.4%)
New tutelary cases (50,653; 18.1%)

Completed cases (288,443)
Completed payment orders (133,113)

Court judgement (213,335; 74.0%)
No need to adjudicate/loss of interest (42,181; 14.6%)
Other reasons (32,927; 11.4%)

Apposition of enforcement formula (105,028; 78.9%)
Waiver (4,219; 3.2%)
Other reasons (23,866; 17.9%; 14,157 by opposition; 10.6%)

Condemnatory judicial decision (20,423; 17.2%)
Payment order with an enforcement formula (41,653; 35.0%)
Other enforcement orders (56,763; 47.8%)

Completed enforcement actions (213,004)
New enforcement actions (118,839)

End of procedure due to insolvency (11,330; 5.0%)
Total/partial payment (92,169; 41.0%)
Non-payment (62,777; 27.9%; 56,650 for lack or insufficiency of assets; 25.2%)
Other reasons (46,728; 26.1%)

Average duration of completed cases/procedures (in months), 2013-2018

Term modality
13.2. Criminal Justice Overview (1st instance) – 2018

Flagrante delicto

Incidents registered by the police (333,223) + Public prosecution service

New criminal inquiries (435,886)

Completed criminal inquiries (408,447)

No charge (315,945; 77.4%)

Charges (47,133; 11.5%)

Withdrawal (27,701; 6.8%)

Completed upon compliance of injunction (14,555; 3.6%)

Waiver of the sentence (289; 0.07%)

Other reasons (2,824; 0.7%)

New juvenile inquiries (5,369)

New cases at trial stage (57,651)

Completed juvenile inquiries

Opening of the judicial phase

Injunction

Withdrawal

No charge

Clearance rate

Disposition time

Average duration of completed cases

Criminal inquiries 100.0%

Trial stage 103.0%

*Ratio of the total volume of completed cases to the total volume of incoming cases.

**Time it would take to complete all pending cases.

Average duration of completed cases (in months), 2013-2017

Criminal inquiries

Trial stage

100.0%

103.0%

23%

9%

1%

67%
Criminal Justice Overview – 2018

Flagrante delicto

Incidents registered by the police (333,223)

Public prosecution service

New criminal inquiries (435,886)

Completed criminal inquiries (408,447)

New juvenile inquiries (5,369)

No charge (315,945; 77.4%)

Charges (47,133; 11.5%)

Withdrawal (27,701; 6.8%)

Completed upon compliance of injunction (14,555; 3.6%)

Waiver of the sentence (289; 0.07%)

Other reasons (2,824; 0.7%)

New cases at trial stage (57,651)

Completed cases at trial stage (57,903)

Defendants tried (72,551)

Convicted persons (48,203; 66.4%)

Not convicted (24,348; 33.6%)

Imprisonment (3,849; 12.5%)

In-house confinement (429; 0.9%)

Suspended imprisonment (11,542; 23.9%)

Fine (30,248; 62.8%)

Community work (1,311; 2.7%)

Other sentences (824; 1.7%)

Coercive measures

- Pre-trial detention 30.9%
- Periodic presentation to an authority 29.4%
- Prohibition of contacts/to remain in places 31.6%
- Electronic monitoring 4.4%
- Other 3.8%

Average duration of completed cases (in months), 2013-2017

- Criminal inquiries
  - 2013: 9 months
  - 2014: 9 months
  - 2015: 9 months
  - 2016: 9 months
  - 2017: 8 months
  - 2018: 8 months
- Trial stage
  - 2013: 11 months
  - 2014: 11 months
  - 2015: 11 months
  - 2016: 12 months
  - 2017: 12 months
  - 2018: 12 months

Clearance rate* Disposition time** Average duration of completed cases

- 97% 159 days 5 months
- 98% 228 days 9 months

* Ratio of the total volume of completed cases to the total volume of incoming cases.
** Time it would take to complete all pending cases.
USEFUL LINKS

> E-Justice
  justiça.gov.pt

> Directorate General for Justice Policy
  dgpj.justica.gov.pt

> Directorate General of Justice Administration
  dgaj.justica.gov.pt

> INPI – Portuguese Institute of Industrial Property
  inpi.justica.gov.pt

> Institute of Registries and Notary
  irn.justica.gov.pt

> Directorate General for the Consumer
  consumidor.gov.pt

> European Consumer Centre
  cec.consumidor.pt
> Portuguese Bar Association
  oa.pt

> Chamber of Solicitors and Enforcement Agents
  osae.pt

> European e-justice
  e-justice.europa.eu

> List of arbitration centres
  dgpj.justica.gov.pt

> List of consumer dispute arbitration centres
  consumidor.gov.pt

> Unfair general contractual terms, tried in the Portuguese courts
  dgpj.justica.gov.pt

> Social Security (income simulator for legal protection purposes)
  seg-social.pt