



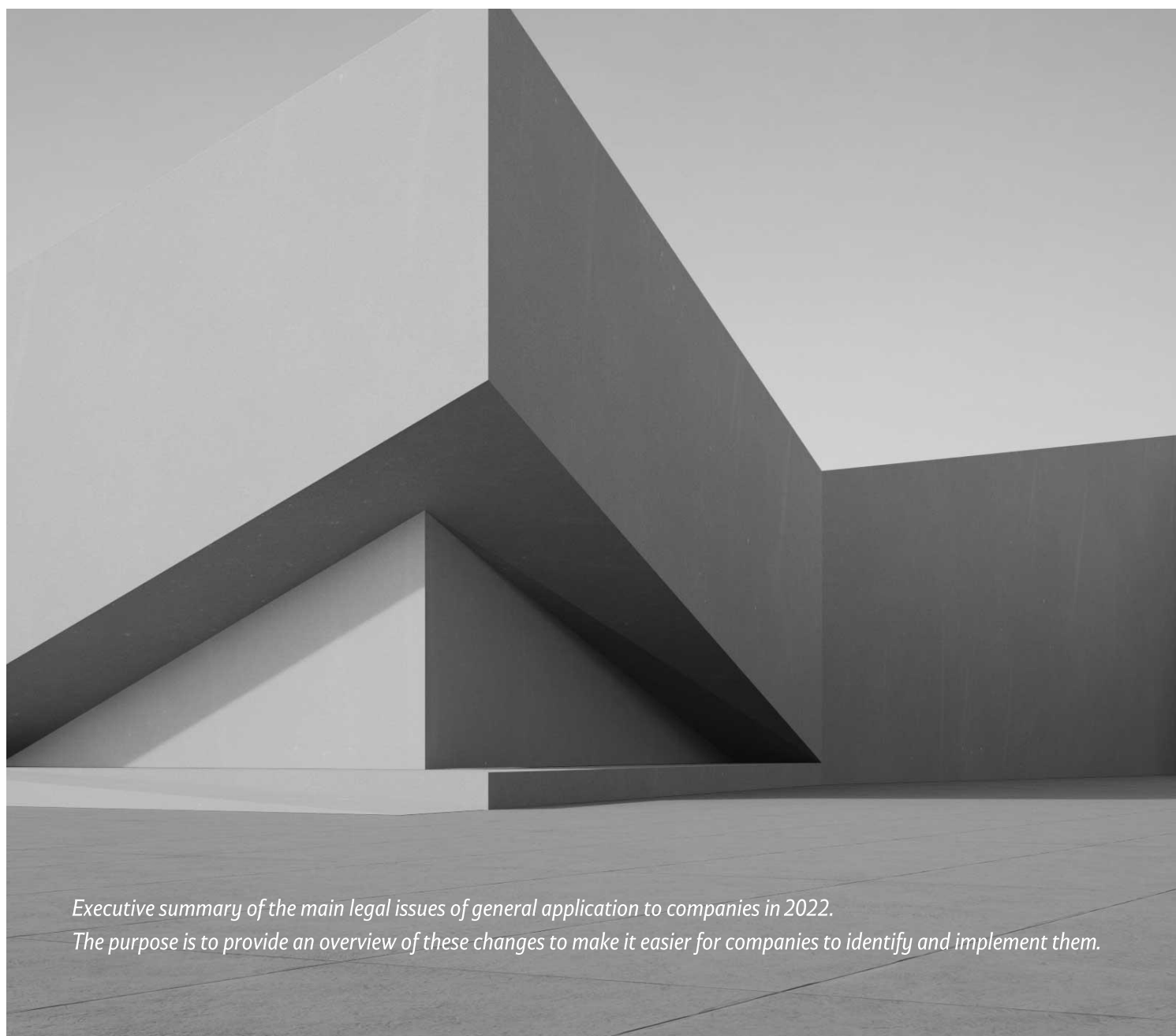
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## Portugal

# What happened in 2022?

## Highlights for companies

December 8, 2022



*Executive summary of the main legal issues of general application to companies in 2022.*

*The purpose is to provide an overview of these changes to make it easier for companies to identify and implement them.*



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## Highlights

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### 1. WHISTLEBLOWING

The general regime for the protection of whistleblowers was a hot topic in the national legislative panorama, and companies with 50 or more employees were required to (i) create internal channels for reporting complaints, and (ii) implement rules to ensure they are processed properly.

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### 2. CAPITAL MARKETS, BANKING AND FINANCE

The Portuguese Securities Code was reviewed at the end of 2021 and amended again in 2022. The most significant amendments include the developments regarding public offerings, the legal regime applicable to listed companies, and the disappearance of the open company (*sociedade aberta*), which means some companies will now be beyond the supervisory scope of the Portuguese Securities Market Commission (CMVM). The introduction of the equity loan is also worth mentioning. Regarding the crypto-assets sector, the European Council approved the Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (the “MiCA Regulation”)

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### 3. COMPETITION

The European Commission published the new Vertical Block Exemption Regulation, accompanied by the new Vertical Guidelines, which entered into force on June 1, 2022. This regulation introduced several changes, with a particular impact on companies as regards distribution agreements and their relationships with suppliers or B2B customers. In September, Law 17/2022 of August 17 entered into force, which grants a wide range of new powers to the Portuguese Competition Authority.

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### 4. LABOR

2022 was marked by important labor law developments, with an emphasis on the new legal regime for teleworking, which posed many challenges for the human resources departments of companies and their legal advisors.

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### 5. REAL ESTATE

We highlight Constitutional Court Ruling 468/2022 of June 28, 2022, which has a significant impact on shopping center tenants and which declared the

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unconstitutionality of the rule in the Supplementary State Budget for 2020, which exempted shopping center tenants from paying the fixed or minimum rent until December 31, 2020. We also highlight the ceiling of 2% for rent increases in land and building leases entered into up to December 2022 that contain no provisions on updating rents or that refer expressly to the annual rent coefficient determined by the National Statistics Institute (INE).

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## **6. PUBLIC**

As regards public procurement, we highlight (i) the exceptional and temporary regime for price increases with an impact on public contracts, and (ii) the amendments made by Decree-Law 78/2022 of November 7 to several public procurement regimes in the area of research activities. The figures for the qualification categories for public works contractor licenses and private works contractor licenses—and other types of administrative permissions for construction activities—were also updated.

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## **7. RESTRUCTURING AND INSOLVENCY**

2022 was marked by the introduction of a broad range of significant amendments, primarily to the Portuguese Insolvency and Company Recovery Code, regarding the Special Recovery Process (“PER”), and insolvency proceedings, aimed both at (i) speeding up company restructuring processes and payment agreements as alternatives to insolvency proceedings, and (ii) simplifying insolvency processes.

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## **8. TAX**

As regards tax, we highlight the main changes made by the law that approved the State Budget for 2022, as well as the termination by Sweden of the Convention between Portugal and Sweden for the Avoidance of Double Taxation and the Prevention of Income Tax Evasion (“Portugal-Sweden DTT”). We also summarize the legislation that approved the deferral of tax obligations to support companies as a result of the conflict in Ukraine.

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## **9. INTELLECTUAL PROPERTY, DIGITAL TECHNOLOGY AND RESOURCES, AND DATA PROTECTION**

We highlight the publication of the Electronic Communications Law, the purpose of which is to harmonize certain legal aspects of the sector at a European level, such as consumer protection, universal service requirements, and, especially, the reform of the concept of electronic communications service. Geo-blocking practices and

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discrimination in electronic sales to consumers were also prohibited as of October. Finally, we highlight the approval of the Digital Services Package.

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### **10. ENERGY**

We highlight the entry into force of Decree-Law 15/2022 of January 14, which establishes the organization and functioning of the National Electrical System. We also emphasize the two-year transitional regime for simplifying and accelerating the administrative licensing processes for renewable projects. Also, due to the instability in the energy sector caused by the armed conflict in Ukraine, an exceptional and temporary regime was created to fix prices in the Iberian Electricity Market (MIBEL).

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# 1. Whistleblowing

**This regime entered into force on June 18, 2022, and it requires companies with 50 or more employees to (i) create internal reporting channels, and (ii) implement rules to ensure complaints are processed properly.**

- > The General Whistleblower Protection Regime entered into force on June 18, 2022, but it was incorporated into Portuguese law at the end of 2021 through Law 93/2021 of December 20, which transposes the European Union's whistleblowing directive into Portuguese law (Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019).
- > The regulation establishes the obligation for companies with 50 or more employees and public entities to (i) create internal reporting channels, and (ii) implement rules to ensure complaints are processed properly.
- > The scope of infringements that can be communicated using this mechanism is broad, and companies can be subject to fines of up to €250,000.
- > The implementation of whistleblowing channels does not end when they are created, and companies must manage the follow-up of complaints effectively and communicate the measures they have taken or adopted to whistleblowers within the established period. Companies must also provide proper training to all employees over time to ensure they are aware of the available reporting channels and procedures (see [Whistleblowing Roadmap](#), which contains a legal framework and a chart with all the steps we recommend for implementing these channels and the subsequent management and processing of complaints).



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## 2. Capital Markets, Banking and Finance

### Revised Portuguese Securities Code

Law 99-A/2021 of December 31 made significant changes to the Portuguese Securities Code (see [Legal Flash](#)), including the following:

- > Elimination of the open company (“*sociedade aberta*”)  
The open-company concept will be eliminated on December 31, 2022 (transitional provision in article 19-1).
- > Elimination of the 2% voting rights threshold for reporting a qualified stake in a listed company  
The minimum threshold is now 5% of the share capital voting rights.
- > Provision for plural voting
- > Application of the takeover bid regime to capital instruments only  
Public exchange bids are no longer subject to the takeover bid regime.
- > Elimination of the mandatory financial intermediation in public offerings
- > Establishment of a new regime for voluntary delisting  
The purchaser of shares from minority stockholders no longer needs to be a stockholder, and may now be a third party or the delisting company.

### Legal regime for equity loans

- > Decree-Law 11/2022 of January 12 introduced the figure of the equity loan (“*empréstimo participativo*”) into Portuguese law (see [Legal Flash](#)).
- > An equity loan is a remunerated credit agreement, which may be in the form of a loan or a debt instrument. It is an equity instrument whenever (i) the remuneration depends on the borrower’s returns, and (ii) the repayment or amortization is subject to compliance with the rules on the distribution of assets and profits established in the Portuguese Commercial Companies Code. Article 3.1 of the decree-law lists the entities authorized to grant this type of loan.
- > The credit rights arising from equity loan agreements are freely transferable, including to



loan securitization companies.

## MiCA Regulation

- > On October 5, 2022, the European Council approved the MiCA Regulation (see [Legal Flash](#)).
- > The approval of the MiCA Regulation by the European Council is a significant step forward for the European and global crypto-asset sector. Entities with crypto-asset-related activities must comply with the MiCA Regulation by the time it becomes fully applicable at the end of 2024.
- > The version of the MiCA Regulation now approved by the European Council sets several legislative developments for entities that provide crypto-asset-related services in the European Union (“EU”), including more stringent requirements for entities that sell and trade asset-referenced tokens and issuers of e-money tokens, as well as the creation of a common passport regime for operating in the European market.

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## 3. Competition

### Amendments to the Portuguese Competition Act – Transposing the ECN+ Directive

- > On September 16, 2022, Law 17/2022 of August 17 entered into force, transposing Directive (EU) 2019/1 of the European Parliament and of the Council of December 11, 2018 (“ECN+”) and amending the Portuguese Competition Act (Law 19/2012 of May 8) and the Competition Authority Statutes (see [Legal Flash](#)).
- > Main changes made by transposing ECN+:
  - **Increased fines**, which now cover the company group’s **worldwide** turnover.
  - Information seized in dawn raids can now be searched and selected at **the Portuguese Competition Authority’s premises**.
  - **The statute of limitations** during the appeal period has been suspended, and there is now no time limit.



- The period for lodging an appeal against the Portuguese Competition Authority's final decisions has been extended to 60 business days.
- The suspensory effect of the appeal requires the provision of a **security bond** equivalent to **50% of the fine** imposed.

### Review of the block exemption regulation applicable to vertical agreements

- > The European Commission published the new [Vertical Block Exemption Regulation](#), accompanied by the new Vertical Guidelines, which entered into force on June 1, 2022 (see [Legal Flash](#)).
- > The amendments made by this regulation have a particular impact on companies as regards distribution agreements and their relationships with suppliers or B2B customers, including the following:
  - Information exchanges in dual distribution systems (i.e., when a company acts simultaneously as a supplier and as a downstream competitor) are no longer exempted by the Vertical Block Exemption Regulation.
  - Broad parity obligations are now excluded from the Vertical Block Exemption Regulation's scope of application.
  - The rules on exclusive and selective distribution systems are clearer, and they include more exemptions that will benefit from the Regulation's safe harbor.
  - Online sales now have a legal definition, which did not exist in the previous Vertical Block Exemption Regulation.
  - Dual pricing is no longer considered a hardcore restriction, and different prices can be established depending on the sales channels.

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## 4. Labor

- > In 2022, Law 83/2021 of December 6 entered into force, which implemented the new teleworking regime and boosted the—mandatory—conclusion of teleworking agreements and promoted the creation of internal policies by companies (see [Legal Flash](#)).





- > Decree-Law 109-B/2021 of December 7 raised the minimum monthly salary from €665 to €705.
- > The legal retirement age is now 66 years and seven months under Ordinance 53/2021 of March 10.
- > Law 1/2022 of January 3 extended the period of justified absence for the death of a child, stepchild, son-in-law, or daughter-in-law from 5 to 20 days.

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## 5. Real estate

### Unconstitutionality of shopping center tenant's exemption from paying fixed remuneration until December 31, 2022

Constitutional Court Ruling 468/2022 of June 28, 2022, will significantly affect shopping center tenants. The ruling declared the unconstitutionality of the provision in the Supplementary State Budget for 2020, which exempted shopping center store tenants from paying the fixed or minimum rent until December 31, 2020 (see [Post](#)).

The provision was approved within the context of mitigating the economic consequences of the COVID-19 pandemic and only applied to real estate operating contracts for trade and services in shopping centers.

Conclusion: The provision established an exemption from paying the fixed or minimum rent, meaning the only amount payable was (i) the variable component of the rent, calculated on the sales made by the tenant; and (ii) the remaining contractually agreed expenses.

The plenary session of the Constitutional Court ruled as follows:

- > The credit right of the shopping center owner or manager to fixed or minimum rent falls within the scope of protection of the right to private property established in article 62 of the Constitution of Portugal.
- > If the shopping center manager is deprived of the fixed or minimum rent—which is the more substantial portion—it is at risk of being unable to provide the services that are essential for the shopping center to function properly.



- > The tenants were given excessive protection to the detriment of the counterparty. The automatic application of the fixed rent exemption to all tenants during the period in question failed to consider their actual financial situation or any real calculation of the gains or losses caused by the pandemic.
- > This is a ruling of partial unconstitutionality, which preserves some of the legal effects of the rule in question. The fixed monthly rent was not entirely exempt but proportionally reduced by applying the partial exemption calculation under the same terms applicable during the first six months of 2021; that is, based on the decline in the store's monthly sales, capped at 50% of the amount, when stores saw a decrease in their monthly sales compared to the sales they made in the same month in 2019 or, if there is no such figure, to the average sales in the 6 months before March 2020, or a shorter period, where applicable.

Conclusion: Following the unconstitutionality ruling of June 28, 2022, shopping center owners or managers are now entitled to ask the tenants to return part of the fixed rent that was not paid between March and December 2020, unless they agree otherwise.

### Ceiling for updating rents and extraordinary tax benefit for rentals

- > **Maximum rent increase of 2%**

As a rule, parties are free to agree on the rent update conditions in the lease agreement. If they do, or if there is an express agreement to this end, the rent may be updated annually in line with the current updating coefficients.

Law 19/2022 of October 21 established, as an exceptional measure to avoid a sharp increase in rents due to the current inflation context, that the annual rent coefficient calculated at 5.43% on August 31, 2022, according to the consumer price index (CPI) for the last 12 months—excluding housing—will not apply during 2023. Instead, a 2% coefficient will apply, unless the parties agree otherwise (see [Legal Flash](#)).

Therefore, Law 19/2022 of October 21 establishes a maximum threshold of 2% for rent increases in land and building lease agreements entered into up to December 2022 that contain no provisions on updating the rent or that expressly refer to the annual rent coefficient determined by the National Statistics Institute (INE). However, the parties can agree on different updating terms. This exceptional solution does not cover other types of contracts for the use of real estate; namely, store-use contracts.



### > Extraordinary tax benefit support for rentals

An extraordinary personal income tax (“PIT”) and corporate income tax (“CIT”) benefit was established to compensate landlords for the maximum threshold established for rent increases (mentioned above) on the taxation of income from rents earned in 2023, which will be calculated in 2024.

Specifically, for CIT purposes, taxable income from rent is always calculated by applying the 0.87 coefficient, except for taxpayers covered by the simplified regime for determining taxable income.

To be entitled to this benefit, the rent must:

- fall due and be paid in 2023;
- derive from leases in effect before January 1, 2022; and
- not concern contracts that are updated at a higher amount than would result from applying the 2% coefficient now stipulated in Law 19/2022 of October 21.

This benefit will apply from January 1 to December 31, 2023.

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## 6. Public

### Extension of the exceptional price-revision regime

- > Decree-Law 36/2022 of May 20 established an exceptional temporary regime for price increases with an impact on public contracts.
- > The approval of this regime aimed to respond to the sharp increase in the prices of raw materials, materials, and labor, with an emphasis on the construction sector, which affected the economy significantly.
- > This regime entered into force on May 21, 2022, and it established extraordinary review measures for prices in public contracts and in contracts subject to public procurement rules, as well as an exceptional regime that allows for contracts to be awarded above the base price, even when this is not envisaged in the tender documents.



- > Under Decree-Law 36/2022, this exceptional regime would have been in force until December 31, 2022, but Decree-Law 67/2022 of October 4 extends its validity to June 30, 2023.

### Amendment to several public procurement regimes

- > Decree-Law 78/2022 of November 7 amended several public procurement regimes and several regimes regarding research activities (see [Legal Flash](#)). The amendments include the following:
  - New grounds for the exclusion of proposals submitted in public procurement procedures
  - Alteration of the grounds for using the direct award procedure, the negotiation procedure, and the competitive dialogue procedure
  - Alteration of the mechanism for rectifying irregularities of form in applications or bids submitted in public procurement tenders
  - Alteration of the warranty period in public works contracts for defects related to equipment allocated to the works but separable from it
  - Amendment to the supplementary work regime
  - Amendment to the applicable regulatory offense regime
  - A special regime for the execution of design-build public works contracts

### Updating the figures for the license categories

- > Ordinance 212/2022 of August 23 established the most recent figures for the qualification categories for public works contractor licenses and private works contractor licenses (and other types of administrative permission for construction activities).

This update aims to increase competitiveness, boost the economy, and help companies in the construction sector (see [Legal Flash](#)).



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## 7. Restructuring and insolvency

### Measures to support and speed up company restructuring processes and payment agreements

- > Law 9/2022 of January 11 (“Law 9/2022”), which transposed Directive (EU) 2019/1023 of the Parliament and of the Council of June 20, 2019, introduced a wide range of substantial amendments to the Portuguese Insolvency and Company Recovery Code, the Portuguese Commercial Companies Code, and the Portuguese Commercial Registry Code, as well as to related legislation, such as the following:
  - PER
    - The establishment of an obligation to submit—together with the PER application—a proposal for the classification of creditors in distinct categories. That obligation is applicable to companies that are not micro, small, or medium-sized companies, and impacts on (i) the majorities for the recovery plan to be approved, and on (ii) the requirements for it to be approved by the court.
    - As was already the case in insolvency proceedings, Law 9/2022 establishes as null the clause that attributes to the PER application, or to the commencement of a PER, or to the application to extend or to approve the suspension of enforcement measures, the value of a resolutive condition or that, in this case, it gives the opposing party a right to indemnity, or to terminate or cancel the contract.
    - Amendments to the suspension of enforcement measures after the preliminary injunction is issued, especially the clarification that the preliminary injunction only prevents the filing of enforcement actions for the collection of debts, and the broadening of the scope of contracts that creditors cannot refuse to comply with, terminate, accelerate, or amend unilaterally, concerning debts incurred before the suspension of those enforcement measures, when the sole basis is the non-payment of those debts – now, not only essential public service contracts are covered, but also other ongoing execution agreements necessary for the company to maintain its activity.
    - The establishment of multiple protection mechanisms for the financing granted and associated guarantees during the PER or in the execution of the recovery plan.



- The establishment of the obligation for the provisional judicial administrator to submit to the judge—together with the approved recovery plan—a reasoned opinion on whether the plan has a reasonable chance of avoiding the insolvency of the company or ensuring its viability.
- The provision of new requirements for the PER to be approved by the court.
- Insolvency proceedings
  - The establishment of the debtor’s obligation, when applying for insolvency, to file a document identifying (i) the companies with which it is in a group or control relationship, or which are considered associated companies; and, if applicable (ii) the proceedings in which its insolvency is or has been requested.
  - The clarification of the concept of persons with a special relationship with the debtor (“*peçoas especialmente relacionadas*”), and the amendment to the concept of (i) claims held by such persons - classified as such, provided that the relationship existed at the time of the origination of the credit (and not at the time of its acquisition, as in the previous wording) – , and (ii) to whom the claims were transferred in the two years before the insolvency proceedings were started.
  - The establishment of measures to expedite the sale of the assets comprising the insolvent estate (“*massa insolvente*”).
  - The establishment of the obligation to make partial assessments of the amounts deposited to the order of the insolvent estate whenever, cumulatively, (i) the court decision declaring the insolvency (“*sentença declaratória da insolvência*”) has become final, and the assets are being liquidated; (ii) the period for challenging the list of creditors has expired without any challenge being filed (or, if there was a challenge, it has already been decided), with the amounts being attributed proportionately— considering the maximum amount that could be recognized— having to remain on deposit if the decision is not final; (iii) the amounts deposited to the order of the insolvent estate are equal to or greater than €10,000 and the ownership of these amounts is not disputed; and (iv) the final proportion (“*rateio final*”) cannot yet be calculated.



## Simplifying the procedure to verify liabilities and ranking claims in insolvency proceedings

- > Decree-law 57/2022 of August 25 amended the Portuguese Insolvency and Company Recovery Code and assigned to the insolvency administrator the responsibility of submitting—together with the lists of recognized and non-recognized creditors—a proposal for ranking the recognized creditors, by reference to the foreseeable composition of the insolvent estate. Where there are no challenges to said proposal, and provided the judge agrees with the proposed ranking, the judge will approve the two documents and pass a decision on the validity and the ranking of the claims (see [Post](#)).

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## 8. Taxation

### State Budget for 2022

- > PIT
  - Mandatory aggregation of capital gains from securities: The difference between capital gains and capital losses on the disposal of securities held for under 365 days must be aggregated, as of January 1, 2023, when the capital gains are made by taxpayers with a taxable income equal to or greater than the highest income bracket (€75,009).
  - Capital gains from trusts: Gains or losses resulting from the assignment of rights over trusts, including the assignment of the beneficiary's position, will now be considered capital gains or losses subject to PIT.
- > CIT
  - Patent box regime: The deduction of income from contracts for the temporary assignment or use of industrial property rights from the taxable income has increased from 50% to 85%.
  - Special payments on account: The obligation to make special payments on account is repealed.



## > Others

- Contributions of real estate by shareholders: The contribution of real estate by shareholders (to comply with additional capital requirements) to the capital contributions of companies or firms considered to have legal personality is now subject to property tax (“IMT”).
- Recovery tax incentive (“IFR”): The IFR is created for taxpayers subject to CIT that incur investment expenses materializing in the acquisition of tangible fixed assets, non-consumable biological assets, and intangible assets between July 1 and December 31, 2022, which, provided certain requirements are met, will benefit from a CIT deduction up to the limit of eligible investment expenses of €5 million.
- Communication of invoices - SAF-T (PT): As of January 1, 2023, the deadline for communicating invoice details is brought forward from the 12th to the 8th day of the month after they are issued.

## Portugal-Sweden DTT

- > In Notice 2/2022 of February 1, 2022, the Ministry of Foreign Affairs communicated Sweden’s termination of the Portugal-Sweden DTT, which was signed in Helsingborg on August 29, 2002.
- > Sweden terminated the Portugal-Sweden DTT because it was dissatisfied with the more favorable treatment of pension income conferred by the status of non-habitual resident.
- > Under article 30 of the Portugal-Sweden DTT, its termination became effective on January 1, 2022.

## Deferral of tax obligations - support for companies in light of the conflict in Ukraine

- > To mitigate the economic effects caused by the current conflict between Russia and Ukraine, tax measures to support families, companies, and the self-employed were approved at two different times: (i) Decree-Law 30-D/2022 of April 18; and (ii) Decree-Law 42/2022 of June 29.





> **Decree-Law 30-D/2022 of April 18**

- Deferral of tax obligations falling due in first half of 2022: Value-added tax (“VAT”) and PIT and CIT deducted at source could be paid in three- or six-monthly installments (equal to or greater than €25), without interest or penalties, and the requirement to submit a guarantee was waived.
- Particularly affected sectors: The measures of this decree-law could only apply to companies in sectors that were particularly affected. It was implemented by Ordinance 141/2022 of May 3, which listed the business activities of the companies covered by this extraordinary regime, including the agriculture, textile manufacturing, and metallurgical industries.

> **Decree-Law 42/2022 of June 29** (see [Post](#))

- Deferral of tax obligations falling due in the second half of 2022: VAT and PIT and CIT deducted at source could be paid in three- or six-monthly installments (equal to or greater than €25), without interest or penalties, and the requirement to submit a guarantee was waived.
- Extension to all companies: In contrast to Decree-Law 30-D/2022 of April 18, Decree-Law 42/2022 of June 29 extended the subjective scope of application of the tax support measures to all companies operating in Portugal.

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## 9. Intellectual property and digital technology and resources

### Electronic Communications Law

- > On August 16, Law 16/2022 (approving the Electronic Communications Law) was published. It transposes several directives, including Directive (EU) 2018/1972 of the European Parliament and of the Council of December 11, 2018, establishing the European Electronic Communications Code (“EECC”).
- > Generally, this law modernizes and simplifies all rules and obligations applicable to telecommunications and electronic communications services to harmonize certain legal aspects of the sector at a European level, such as consumer protection, universal service



requirements, and, in particular, reform of the concept of electronic communications service.

- Therefore, this law broadens the definition of the concept of electronic communications service to include communication services such as email and instant messaging. Although it previously only included traditional communication services and internet access, it now also covers internet services.

### Prohibition of geo-blocking

- Law 7/2022 of January 10, which prohibits geo-blocking practices and discrimination in electronic sales to consumers, entered into force in October 2022 (see [Legal Flash](#)).
- This law applies to all merchants operating in Portugal and supplements the implementation of Regulation (EU) 2018/302 of the European Parliament and of the Council of February 28, 2018, which addresses the prevention of geo-blocking based on the place of residence or establishment of internal market customers.
- New obligations are established for merchants that use distance contracts, prohibiting geo-blocking and unjustified discrimination, as well as other forms of discrimination in online sales based directly or indirectly on the consumer's place of residence or establishment.
- Among other aspects of the law, merchants are prevented from (i) blocking or restricting the consumer's access to certain interfaces using technological or other measures; and (ii) redirecting consumers to a different online interface based on their geographical location.

### Digital Services Package: the Digital Services Act and the Digital Markets Act

The European Union recently adopted the Digital Services Act ("DSA") and the Digital Markets Act ("DMA"), which are two complementary legislative initiatives of the European Commission aimed at creating a safer digital space where users' fundamental rights are protected and a level playing field is established for businesses (see [Legal Flash](#)).

#### DSA

1. In particular, the DSA ([Regulation \(EU\) 2022/2065 of the European Parliament and of the Council of October 19, 2022](#)) aims to allow platforms to unlock their full potential by addressing the more obvious cases of unfair practices and the lack of accountability at an EU level so that end users and business users can maximize the benefits of the platform economy and the digital economy more generally.



- > This regulation includes the following:
  - Harmonization of the rules applicable to the provision of intermediary services within the EU, while maintaining the separate validity of various rules as *lex specialis*.
  - Standard table of liability exemptions:
    - Mechanisms for notification and removal of content
    - New system of control and sanctions
    - New significantly increased duties of care and transparency
- > Although the regulation does not enter into full force until early 2024, certain provisions of the regulation became applicable on November 16, 2022.

### DMA

- > The DMA ([Regulation \(EU\) 2022/1925 of the European Parliament and of the Council of September 14, 2022](#)) entered into force on November 1, 2022. In addition to the applicable competition rules, this regulation imposes a series of measures and prohibitions aimed at preventing unfair practices by companies that act as gatekeepers on online platforms and services.
- > Companies that provide essential platform services (e.g., app stores, search engines, browsers, social networks, streaming platforms, and marketplaces) that—for a prolonged period—meet certain criteria based on turnover and number of users are classified as gatekeepers under the DMA.
- > Access controllers are prevented from favoring their own or third-party services in a discriminatory manner on the platform and are now subject to duties of interoperability and reporting of acquisitions/mergers in the digital sector to the European Commission.
- > Gatekeepers will have until May 2023 to take the necessary measures to comply with the DMA provisions.



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# 10. Energy

### National Electrical System

- > Decree-Law 15/2022 of January 14, which came into effect on January 15, 2022, established the legal regime for the organization and functioning of the National Electrical System. The various amendments made by this decree-law include:
  - the standardization of the various prior control administrative procedures in the energy sector;
  - the amendment to the regime for transferability of capacity reservation certificates and production and operating licenses;
  - the regulation of previously unregulated activities in the energy sector (overequipping and re-equipping, hybrids and hybridization, and autonomous storage);
  - the regulation of self-consumption and active consumer participation in energy markets; and
  - the creation of technological free zones for developing pilot projects.

### Exceptional measures for simplifying procedures for renewable energy projects

- > Considering the impact of rising fossil fuel prices and the objectives set at a European level to intensify the production of green energy, Decree-Law 30-A/2022 of April 18 (see [Legal Flash](#)) was approved and subsequently amended by Decree-Law 72/2022 of October 19 (see [Post](#)), which implemented a two-year transitional regime, simplifying and accelerating administrative licensing processes for renewable projects.

### Iberian mechanism for reducing electricity prices

- > Given the instability in the energy sector caused by the armed conflict in Ukraine, and to reduce prices, Decree-Law 33/2022 of May 14 created an exceptional and temporary regime for the fixing of prices in the MIBEL, which will be in force between June 15, 2022, and May 31, 2023, by establishing a reference price for the natural gas consumed producing electricity traded in the MIBEL (see [Legal Flash](#)). As this mechanism was designed in



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collaboration with the Spanish Government, it was published simultaneously with Royal Decree-Law 10/2022, which implemented a similar mechanism.

### Electricity-generating plants based on renewable energy sources originating from or located in the ocean

- > Given the announced objective of the Portuguese Government to reach 10 GW of installed wind power capacity by 2030, Ordinance 11404/2022 of the Offices of the Secretaries of State for the Sea, the Environment, and Energy and Infrastructure was published, creating a working group for the planning and operationalization of electricity-generating plants based on renewable energy sources originating from or located in the ocean.

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