



CHARLES RUSSELL

Guide to buying property in Portugal

1. Preliminary issues

a. Why use a solicitor?

The Portuguese legal system, as in most continental countries, is a codified system of law and is very different from the UK where common law and precedent prevail.

There is a Land Registry system of ownership as in the UK but public documents such as conveyance or transfer deeds have to be signed in the presence of a Notary Public in Portugal in order to make them legally recognised and able to be registered at the relevant Land Registry.

It is vitally important for any buyer of a property in Portugal to obtain independent and professional legal advice. You should ideally instruct your lawyer at as early a stage as possible and before signing a reservation or paying a preliminary deposit.

b. Why use Charles Russell?

➤ **Top firm with an excellent reputation**

Charles Russell is a top 50 UK legal practice, regulated by the Solicitors Regulation Authority.

The practice is long-established with a reputation for quality, backed up by independent research in leading legal directories.

➤ **Making your purchase as straightforward as possible**

Portuguese property and tax laws can be complicated but we look after your interests at every stage and keep you fully informed of progress throughout your transaction.

We instruct a carefully chosen local Portuguese lawyer to assist us with searches and enquiries and, in particular, with the completion arrangements.

➤ **Personal attention**

Charles Russell provides not only the right expertise but also a high level of personal service.

We shall maintain regular contact with you during the course of your transaction and we shall always be on hand to speak to you and provide you with an update. The file is run from our London office with the appropriate technical input from our associate lawyer in Portugal.

➤ **No language barriers**

We will report in English on the documents, in fully comprehensible terms, so that you know exactly what you are signing up to and the costs involved.

➤ **Independent advice**

Since we have no vested interest in your ultimate decision to purchase a particular property, we are able to give you genuinely independent advice concerning the transaction. We shall act in your best interests alone.

➤ **No hidden costs**

Taxes and costs will be fully itemised in advance and the relevant tax implications of the transaction, both in Portugal and in the UK, will be explained and set out.

2. Steps prior to signing the contract

Charles Russell and our Portuguese associate lawyer would normally carry out the following:

- Advise in respect of any **Reservation Contract** and /or Preliminary Deposit.
- Negotiate, amend and finalise the terms of the **Purchase Contract**. In many “resale” transactions, also draft the Purchase Contract and any previous Promissory Contract.
- Carry out essential **searches and enquiries** including :
 - ◆ Obtain full **copies of Title Deeds**
 - ◆ Check at the **Town Hall** (“Camara”) that the property has the necessary **planning permission and building licences** plus a valid and up to date **Habitation Licence**.
 - ◆ Obtain **land registration certificate** from Land Registry and **tax certificate** from the Town Hall Tax Department
 - ◆ Obtain copies of relevant **architectural plans** from the Town Hall
- Advise on the **structure of the purchase**, whether to buy in individual names, or in the name of a company, offshore or otherwise, with particular reference to tax implications.
- Provide a full **written report** on the above matters.

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3. Steps from exchange of contracts to completion

- Purchasers who buy off-plan or unfinished properties from developers are entitled to a **guarantee to secure completion of the construction** should, for example, the developer go bankrupt. We would endeavour to ensure such a guarantee is provided but not all builders are co-operative. New properties should also benefit from a 5 years guarantee against major structural defects.
- A **Power of Attorney** in favour of our Portuguese associate and for use in Portugal can be prepared if required and then assistance provided for signature before a Notary Public followed by legalisation with the apostille stamp at the Foreign & Commonwealth Office.
- Obtaining **fiscal identification number** (N.I.F) at the local tax office in Portugal.
- For a new property, we ensure the developer provides a **property passport** (“Ficha Tecnica de Habitação”) certified by the local authority.
- For an apartment or other property which is part of a community, we endeavour to check the **residents’ association rules** and community payments and check all outgoings are paid up to date.
- Arrange for our associate to liaise with developer or seller and the Notary in Portugal to prepare for the completion appointment and attend completion for the **signing of the Deed of Transfer** (“Escritura de Compra e Venda”).
- The Notary is independent and checks that the parties have legal capacity to enter into the transaction and that the “Escritura” is correctly drafted and executed. On completion the **transfer tax** known as **IMT** (“Imposto Municipal Sobre as Transmissões Onerosas de Imóveis”) is paid and the “Escritura” is then registered at the Land Registry.
 - Formally **notify the utilities companies** (electricity, water etc.) of the change of ownership and set up payment arrangements with your Portuguese bank.

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4. Fees and taxes

a. On purchase of the property

The **transfer tax (“IMT”)** replaced the old SISA tax with effect from 1st January 2004. On properties transferred for a consideration exceeding 534,700 Euros (the 2008 figure) the transfer tax payable by the buyer on completion is 6%. For prices under that figure, there is a sliding scale and the tax payable is lower.

The above applies if the buyer is an individual (non-resident in Portugal) or a white listed company. For a company on the Portuguese black list (there are 83 tax haven countries currently on it), the rate is 8% irrespective of the purchase price.

For a plot of land, the IMT tax rate is 6.5% but again 8% if the buyer is a company on the black list.

The above IMT figures are slightly lower for properties in Madeira and the Azores.

In addition **Stamp Duty** (“Imposto de Selo”) is payable at the rate of 0.8%.

Notary fees and Land Registry fees will also be payable by the buyer plus legal fees in connection with the purchase.

- The total fees and taxes payable by a purchaser of a property over 500,000 Euros would normally amount to about 8% or 9%.

b. Ongoing Taxes and Expenses

- The **municipal council tax** known as **I.M.I** (“Imposto Municipal Sobre Imoveis”) is calculated on the tax (rateable) value of the property and rates are determined annually by each municipality, within certain percentage thresholds e.g.

(1) urban property which has been revalued post 2003 = between 0.2% and 0.5%.

(2) rural land = 0.8%

Black listed company owners pay higher rates

- **Income tax**

Non-resident property owners are charged at a special tax rate of **15% on property income**

Corporation tax rates are 25% with reduced rates for Madeira and the Azores and for small businesses. Municipalities can also apply a small surcharge up to a maximum of 1.5% making the maximum corporation tax rate 26.5%.

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- Note that **non-resident property owners must appoint a fiscal representative** who will be responsible for ensuring that all necessary tax returns are filed and any tax due is paid.
- There is **no Wealth Tax** in Portugal
- **Community Association fees** when the property is, for example, an apartment or part of a community of owners.
- **Usual property outgoings** e.g. electricity, water, telephone

c. Capital Gains Tax (“CGT”)

- CGT is payable by non-resident property owners at a rate of **25% of the net gain** on the sale of Portuguese property taking into account a number of factors including the costs of acquisition and sale, the value of any improvement works and the annual indexation allowance
- There is a different CGT system for Portuguese residents who pay income tax on one-half of the quantified gain on the property sale.

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5. Inheritance issues

Although an English Will is valid in Portugal, you would be well advised to make a **Portuguese Will** dealing exclusively with your Portuguese assets. If you die leaving no Will or simply rely on your English Will, there is likely to be additional expense and delay in passing on or disposing of your Portuguese property.

As a foreigner, you will not be bound by the Portuguese forced inheritance rules. **Succession** is governed in Portugal by the **law of nationality** of the deceased. UK nationals can in most circumstances therefore leave their property in Portugal to whomsoever they choose.

Charles Russell can advise you on the **procedure and tax implications** in advance of the Will being drawn up by our legal associate in Portugal. Following signature before a Notary, the Will is registered at the Central Registration Office in Lisbon.

- Charles Russell and our Portuguese associate can also guide an executor and/or beneficiary through the probate and inheritance system in Portugal when a property owner dies. **Inheritance tax** in Portugal was abolished on 1 January 2004 and replaced by a Stamp Duty. The standard rate is 10% and applies only to assets located in Portugal. Gifts and Inheritances received by close relatives (spouse, children, parents) are exempt. The duty (where payable) is levied on the recipient/beneficiary.

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6. About Charles Russell

Charles Russell is a top 50 legal practice with offices in London, Guildford, Cheltenham, Cambridge, Oxford, Geneva and Bahrain with specialist private client and property expertise.

Our approach

We are known for our client care, expertise, and cost effectiveness. Our strategy is simple – to help clients achieve their goals through excellent service.

We focus on dealing with matters quickly, cost-effectively and in our clients' best interests.



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Julian qualified at Linklaters and joined Charles Russell in 2007. A property partner with a firm in Kent for many years, since 2001 he has specialised in overseas property work, in particular Portugal and Spain where he lived and worked in 2001-2002. He heads Charles Russell's Spanish, Portuguese and Cape Verde Islands' conveyancing service and speaks fluent Spanish.

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