



MORAIS LEITÃO
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NEW WAYS OF LIVING

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The Real estate market is witnessing a rise in new trends and solutions that are becoming increasingly popular among all major cities and leading investors searching for the development of alternatives to core real estate products.

In recent years the sector was limited to traditional uses (residential, offices, retail, logistics and tourism), but we are now facing the investors' appetite for new sorts of products combining and integrating different uses to respond to the desire for more flexible lifestyles.

This innovative approach can be verified in the sector pertaining to offices with the occupiers' willingness to pay premiums for both highly serviced amenity rich space and tech-enabled smart space. However, the changes felt on the housing market have been astounding (despite some critics considering it to be a fringe "dorms for grown-ups").

The combination of high housing costs, debt and more frequent job changes, together with the perks of working remotely, have contributed to the rise of fresh solutions that bring a novel sense of sharing economy and sustained way of living.

The appearance of these new projects in Portugal follows the best practices and current foreign that focus on the design, amenities and technologies of the product so as to maximize the user's experience, notably:

a) Co-living

Co-living is a ground-breaking global phenomenon based on future-fit market fundamentals, which is gradually becoming more relevant in the Portuguese real estate sector.

As a modern form of shared housing for people with common interests, values and/or intentions, co-living

encompasses different structural forms of use of the same building, notably, by combining short term rentals together with touristic accommodation, primarily addressed to either working travellers, students or even locals.

Apart from the philosophy behind this concept, co-living products involve shared and open areas where residents can meet and socialize, such as common kitchens and leisure areas, as well as several services and amenities, notably, cleaning and laundry, community-hosted events, a gym and a swimming pool.

b) Student Housing

Fraternities in Portugal aren't new and have been around for a while. Nonetheless, the concept of student housing has radically changed and the number of operators providing student accommodation has grown significantly in Portugal.

The importance of this alternative sector is certainly due to the increase of foreign students coming to Portugal, but the market has shown sufficient signs that the offer is still not meeting the demand for this product.

Like co-living spaces, this alternative product is a subset of the residential real estate asset class and is distinguished by the ability to rent on a per bed basis and all the roommate matching services and specific amenities.

c) Senior Residences

At a first sight, senior residences may not appear to be the most fashionable or trendy real estate product. However, the new facilities that are being created by these operators in this segment are designed and built to include all of the features senior citizens really want and need.

LEGAL CHALLENGES

Apart from providing alternatives to common housing and office markets, these new trends bring additional legal challenges in their adaptation to the current legal framework.

Although the recent General Law for Housing (Lei de Bases da Habitação), enacted by Law no. 83/2019, of 3 September, establishes a category of private housing known as "*collaborative housing*", where housing coexists with shared spaces and services, there is still a legislative gap in the Portuguese general legislation, as follows:

i) Planning and Licensing

On one hand, the feasibility of developing these alternative projects requires compliance with the territorial management instruments (notably municipal land use plans) that area applicable to the area or zone where such project will be located.

Due to lack of specific regulation of these alternatives, the Municipalities tend to adapt and fit in with the solutions foreseen in the existing legal framework. This is particularly perceived in relation to the land occupation, use and transformation rules, which have a binding nature for private and public entities.

Based on our experience, developers and operators tend to customize on a case-by-case basis the licensing procedure to the land occupation and use foreseen by the respective municipal land use plans (in most cases, by the municipal master plan) and to the definition of each relevant use. Licensing procedure may vary depending on the type of alternative (co-living, student housing or a senior residence) and the Municipality where the license is requested.

In most cases, student housing and senior residences can either be included in uses such as residential or equipment (based on the classification of the relevant municipal masterplan).

The legal framework for co-living tends to be different, as the line separating a specific product from touristic facilities, common housing and short-term local lodgings (estabelecimentos de alojamento local) may not be entirely clear. Nevertheless, in such cases, the construction of co-living may also be made within areas used for housing or equipment (as areas aimed to include the provision of services and products to meet the citizens' collective needs).

The problem is not cherry-picking each location for the development of a certain project, as it is much more than that. The specific land occupation implies several other factors, such as:

- a) the building regulations and requirements, which vary depending on the use foreseen for each property, notably, the compliance with minimum areas for rooms and the construction materials used;
- b) the applicable buildable land index (índice de edificabilidade), or
- c) the number of parking spaces required to serve a certain number of occupiers/residents.

ii) Services agreements

On the other hand, alternatives to common housing also disrupt the contractual standards for housing rental.

The assignment of use of real estate properties for common housing is usually contracted by means of standard lease agreements, subject to the Portuguese Urban Lease Law, based on which some of the terms and conditions may be freely agreed by and between the parties but that also comprises mandatory rules (notably, regarding term and termination of residential standard leases).

In the modern alternatives, the contractual arrangements between the operator and the client are not limited to the use of a certain space. In fact, the peculiarity of these arrangements is the range of ancillary services offered and provided by the operator.

The singularities underlying such alternatives make it that the agreements ruling the use of these new spaces are regarded as mixed-purpose agreements (contratos mistos), encompassing provisions which characterise different contractual types (lease and services agreements). These agreements are governed by (i) the undertakings agreed between the parties and (ii) the general rules set out in the Civil Code regarding all agreements (e.g., lawfulness of the object and capacity of the parties) and, if necessary, by (iii) the non-exceptional legal rules pertaining to the typical agreements that have major similarities with the agreement under analysis.

Moreover, depending on the set of services provided by the operator (as landlord), VAT may be accrued to the consideration paid by the client as remuneration.

FINAL REMARKS

In a nutshell, the modern alternatives to real estate products causes there to be a challenge of framing it within the Portuguese law.

Lack of appropriate regulation is not preventing investors and operators from looking for new opportunities to develop these new trends. However, our experience shows that essential for investors and new operators to assess and outline a strategy and further course of action for licensing and contractual structuring the envisaged projects in advance. ■