

LEGAL ALERT

THE NEW PORTUGUESE INDUSTRIAL PROPERTY CODE

[Decree-Law no. 110/2018](#) (“Decree-Law 110/2018”) was published on 10 December 2018, thus approving a **New Portuguese Industrial Property Code** (“NPIPC”) that replaces the one that has been in effect since 2003 (approved by [Decree-Law no. 36/2003, of 5 March](#)). In addition, the recently published Decree-Law 110/2018 transposes into Portuguese domestic legislation:

- The **2015 Trade Marks Directive** – [Directive \(EU\) 2015/2436](#) of the European Parliament and of the Council, of 16 December 2015, to approximate the laws of the Member States relating to trade marks; and
- The **2016 Trade Secrets Directive** – [Directive \(EU\) 2016/943](#) of the European Parliament and of the Council, of 8 June 2016, on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Decree-Law 110/2018 has as its main aims, *inter alia*, to create a legal framework which boosts innovation and economic growth, particularly by:

- Simplifying, clarifying and updating the regimes provided for in the NPIPC for patents, utility models, designs, trademarks, logos, rewards, appellations of origin and geographical indications, including the respective administrative procedures for the granting, maintenance and loss of industrial property rights;
- Increasing the effectiveness of industrial property enforcement actions on a European scale by introducing mechanisms that strengthen the protection of the industrial property rights;

- Reinforcing the cooperation between national trade mark registration bodies and the European Union Intellectual Property Office, through a process of convergence of practices and the development of common platforms;
- Harmonizing and highlighting the protection of know-how and trade secrets within the Member States of the European Union, through a stronger legal framework.

The new decree-law also takes the opportunity to modify [Law no. 62/2011, of 12 December](#) (“Law 62/2011”) which had created mandatory arbitration for pharmaceutical patent disputes. With these new changes, arbitration proceedings will no longer be mandatory, but rather voluntary. However, the patent owner maintains the obligation to invoke its rights following the publication of the pharmaceutical marketing authorization application. Decree-Law 110/2018 also amends the Portuguese Medicines Statute and the Law on the Organization of the Judicial Courts.

The provisions set out in the NPIP will enter into force on 1 July 2019, except for the rules regarding the protection of trade secrets, which will come into effect on 1 January 2019. Changes to Law 62/2011 will be applicable as of 9 January 2019.

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