



Vicky Rodrigues
Partner and English Solicitor

Who we are...

A Law Firm based in Lisbon and Algarve, Portugal

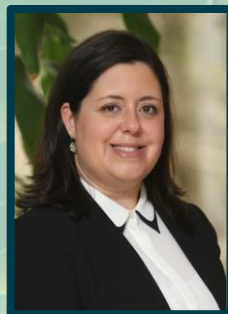
providing legal advice

to national and international clients

for almost 20 years

TPA's TEAM

CORPORATE



LITIGATION



PRIVATE CLIENT

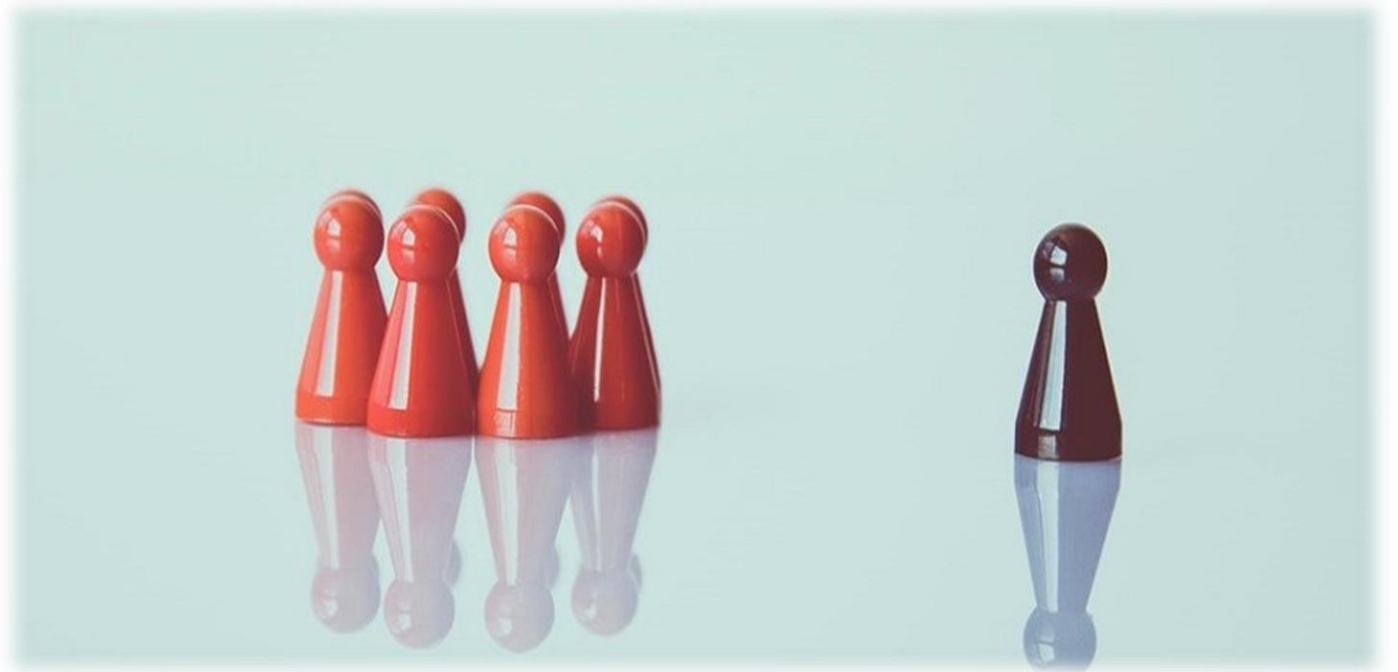


What sets us apart ?

Dual qualified Lawyers

**Experience in a full
range of legal services**

**Transparent and fair fee
approach**



Areas of Law



Our Client's Business



Our Client's Family

Our Client's Business

**Commercial, Contract and
Regulatory**

Corporate and M&A

Data Protection and Privacy

Employment

Real Estate, Lease and Planning

Litigation and Arbitration

Our Client's Family

Family and Children

Immigration

Certificates of English Law

Wills and Succession

Employment

Real Estate, Lease and Planning

Litigation and Arbitration

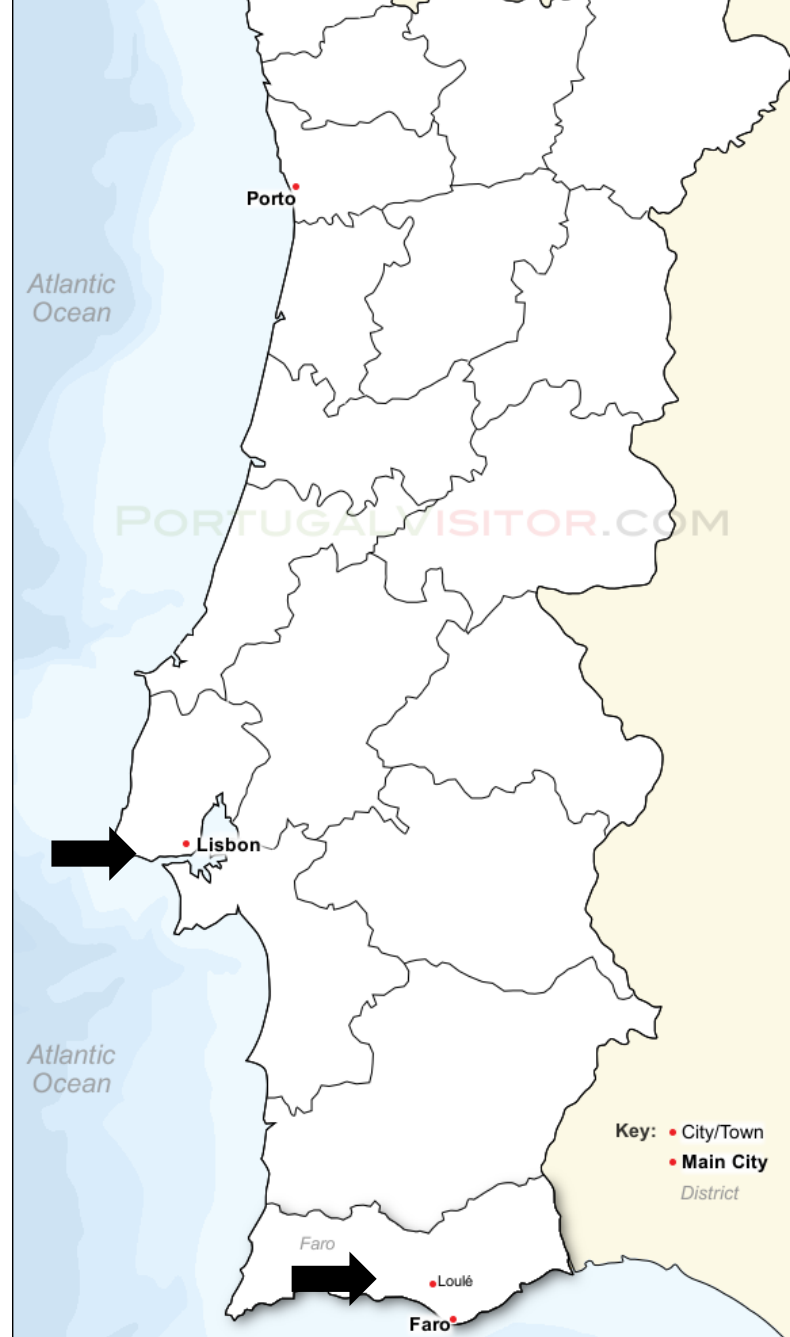
Where can you find us?

Lisbon

Avenida Almirante Gago
Coutinho, 96

Algarve

Rua Natália Correia
Urbanização da Boa Entrada 2
Loja A, Edifício Atlântico Plaza



You can always find us at...



tpalaw.pt



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Agenda

- ✓ **Wills**
- ✓ **Marital Regimes**
- ✓ **Living Wills**
- ✓ **Powers of Attorney**
- ✓ **Probate requirements**
- ✓ **Forced Heirship**
- ✓ **Resealing process**
- ✓ **Tax Residency**



Wills

Executing a Will in Portugal

Why does one need a will?

- No will = **Last Habitual Residence** will apply to succession under EU Succession Regulation = Portuguese forced heirship rules may apply
- A will enables one to:
 - ✓ **choose the law** to apply to the succession
 - ✓ choose who can **administer your estate**
 - ✓ appoint a **guardian** for minor children
 - ✓ safeguard **partners' succession rights**

Executing a Will in Portugal

How many wills should one have?

- Case by case but usually a will to deal with assets **in each jurisdiction**
- **No tax consequences** for choosing foreign law
- Confirm with each jurisdiction their **specific requirements**
- Careful **not to revoke** existing wills unintentionally



No trusts!!!

Executing a Will in Portugal

When should a Will be changed?

- Subsequent **Marriage** and **Divorce** may invalidate wills
- **Property changes** (substantial increase or decrease in assets)
- **Family additions** - birth of new children/grandchildren
- **Death** of beneficiaries
- **Executor** circumstances

Executing a Will in Portugal

Types of Wills :

Public Will

Private Will

Executing a Will in Portugal

What if I can't travel to Portugal?

- It used to be possible to execute a will at the **Portuguese Consulate** in South Africa, but this is not possible since Covid.
- As a bridging solution, include a clause in the South African will to cover the assets in Portugal



Marital Regimes

Marital Regime



When considering whether a will is required, it is important to understand how the asset is registered in Portugal.

In Portugal, we have **3 marital regimes**:

- i. **Community of Assets;**
- ii. **Community of Acquired Assets (Accrual System);**
- iii. **Separation of Assets**



Living Wills

Living Will (Testamento Vital)

- Set out your wishes in terms of the **medical treatment** you wish to receive, in the event that you are unable to express your wishes.
- Appoint someone as your **Healthcare Attorney** – this person can make decisions regarding your medical treatment, should you not be capable to do so.

Living Will (Testamento Vital)

- Both the Grantor and the Attorney must be registered with the Portuguese Healthcare Service and have a **healthcare number**
- The Living Will is **registered** at the National Register of Living Wills.
- The Living Will is valid for **5 years** and needs to be **renewed** thereafter.



Powers of Attorney

Powers of Attorney

- In Portugal, we do not have the concept of the **Lasting Power of Attorney**
- If the Grantor loses mental capacity, the Family should **apply to the Court** to have him/her declared incapable and a representative appointed

Powers of Attorney

- Advisable to have a power of attorney to deal with **day-to-day matters** as a bridging instrument, should the Grantor not be able to act
- Bank accounts – advisable to have **co-signatories** who can make payments on the Grantor's behalf



Probate Requirements

Locating a Will

- If you are unsure whether someone executed a will in Portugal, it is possible to conduct a search at the **Central Will Registry** with the death certificate and the full name and parents' names of the deceased
- If a will was executed in Portugal, the search indicates at which Notary the will was signed

Deed of Entitlement of Heirs

- Signed before a **Notary** by **three witnesses** indicating who the heirs are and providing the necessary documentation



If a foreign law has been chosen - **Certificate of Law will be required**

Deed of Entitlement of Heirs

- All documents issued overseas need to be notarized and **apostilled**, in accordance with the Hague Convention
- If the deceased had **Portuguese citizenship/nationality**, the death must first be registered at the Portuguese Consulate



All life events of **Portuguese citizens** need to be registered on their birth certificate (marriage, divorce etc.)

Informing the Tax Department

Step 2

- A **Model 1 form** is lodged with a list of all of the deceased's assets
- There is **no Inheritance Tax** in Portugal, only **Stamp Duty** at a fixed rate of 10%
- **Exemption** for spouses, children and Common Law spouses
- Only applies to **assets located in Portugal**

Informing the Tax Department

Step 2

- It will be necessary to apply for Portuguese **non-resident tax numbers** for the heirs to be able to receive the assets or register any assets in their names
- If they are tax resident in South Africa, they will need to appoint a **fiscal representative** in Portugal, to receive all communications from the Tax Department on their behalf

Finalizing Administration of Estate

- **Deed of Entitlement of Heirs + Tax Proceedings** allows you to:
 - ✓ **Register** any assets (properties, company shares, vehicles) in the name of the heirs
 - ✓ Request the **release of funds/securities** held in bank accounts

Bank Accounts



Due to client privilege rules, Banks will not provide information on the balance of the accounts without the deed of entitlement of heirs confirming that the person requesting the information is a legal heir.

Small Value Estates



There is no small value estate dispensation for the probate process – it must always be concluded to obtain the release of any assets, whatever their value



Forced Heirship

Forced Heirship

What is it?

- If Portuguese law applies to an inheritance, it is not possible to dispose of the **entire estate** by will
- Certain classes of heirs are entitled to a certain portion of the deceased's estate – this is known as "**forced heirship**"

Forced Heirship

How does it work?

- The portion of the estate that cannot be disposed of varies according to the surviving heirs
- The forced heirs are the **Spouse, Children and Parents**

Forced Heirship

Spouse (no children or parents)

- The spouse's portion of the estate is $\frac{1}{2}$ **the estate**

Forced Heirship

Spouse + Children

- The spouse + children's portion of the estate is **2/3 of the estate**
- The Spouse's portion can never be less than $\frac{1}{4}$

Forced Heirship

Children (no spouse)

- The children's portion of the estate is **1/2 of the estate** (if only 1 child) or **2/3 of the estate** (if more than 1 child)



Resealing Process

Resealing Process

- It is possible to dispose of Portuguese assets through a **South African will**
- This must be **carefully worded**:
 - Ensure clear **choice of law**
 - No creation of **trusts** – leave outright to beneficiaries
 - **Corporate Trustees** are problematic

Resealing Process

Deed of Entitlement of Heirs

- Signed before a **Notary** by **three witnesses** indicating who the heirs are and providing the necessary documentation
- **Will (translated) + Letters of Representation + Affidavit of South African law** confirming **validity** of will (as to **form** and **content**)
- Notarized and Apostilled

Resealing Process

Informing the Tax Department

- A **Model 1 form** with all of the deceased's assets
- No **Inheritance Tax**, only **Stamp Duty** (fixed rate of 10%)
- **Exemption** for spouses, children and Common Law spouses
- Only applies to **assets located in Portugal**



Tax Residency

Tax Residence

A Portuguese tax resident is taxed on their worldwide income and gains

Tax Residence

When is one considered tax resident in Portugal?

- ✓ If they remain in Portugal for **more than 183 days** in any 12-month period; or
- ✓ Having stayed for less time, have a dwelling in Portugal with the intention of maintaining and occupying it as a **habitual residence**

Tax Residence

Tax Benefits:

- ✓ NHR (transitional period in 2024)
- ✓ No Gift tax
- ✓ No Wealth tax
- ✓ No Inheritance tax



Conclusion



Points to consider with clients with assets in Portugal

- ✓ **One or more wills?** Follow the assets...
- ✓ **Nationality** – if SA, then opt for SA law to apply



Points to consider with clients with assets in Portugal

- ✓ **Marital Regimes** – do both husband and wife need a will?
- ✓ **Living Wills** – if resident in Portugal, consider drawing one up



Points to consider with clients with assets in Portugal

- ✓ **Powers of Attorney** – having a plan B if they are unable to make payments
- ✓ **Tax Residency** – ensuring the time the client spends in Portugal does not trigger tax residency



The information provided by TPA in the present seminar is not binding, as it consists on a generic approach of the current applicable legal frame.

The personal conditions of the individuals have a profound impact on the analysis of the different solutions and the Portuguese law is currently on the process of being amended. The analysis of the personal conditions of each individual is paramount to achieving a clear and desired course of action tailored to the client's need. TPA recommends every person needing to obtain legal advice to seek specialized advice on their specific situation before making life-changing decisions on any of matters portrayed during this seminar.

Any professional advice granted by TPA is based on the assumption that the facts and conditions shared by the client are true and conform to reality. TPA will not be liable for any consequences arising from untrue or unlawful information. In the absence of negligence, bad faith or willful misconduct, TPA will not be liable for any losses, liabilities, damages, costs or expenses arising out of any error in data or other information provided by the client.

TPA has in effect and maintains appropriate professional indemnity insurance covering the rendering of legal services to all of its clients.

TPA complies and enforces the rules of the anti-money laundering regulations and the EU current list of sanctions, which affects its client intake procedures.

TPA is registered and acts in accordance with the rules of the Portuguese Bar Association and all its lawyers are authorized to practice law in Portugal. The partners Teresa Patrício and Vicky Rodrigues are registered and authorized to practice as English Solicitors under the rules of the Solicitors Regulation Authority of the United Kingdom of Great Britain and Northern Ireland.



Baie dankie! Thank you!

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