



Name of Country and Jurisdiction:

Portugal

- 1. What forms of legally recognized relationships are available?
 - 2. What are the requirements to be able to enter into the above relationships?
 - 3. Differences between marriage and civil unions and how the two sets of laws interact.
 - 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
 - 5. When a couple comes to Portugal, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
 - 6. How can each form of relationship be dissolved? What is the residency requirement or other link to Portugal for an authority to grant a divorce/ dissolution?
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Q

1. What forms of legally recognized relationships are available?

A

LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	Portugal	Law No. 9/2010 of 31 May, Permitting Civil Marriage Between Persons of the Same Sex (<i>Lei n.º 9/2010, de 31 de Maio, Permite o casamento civil entre pessoas do mesmo sexo</i>)	Yes
<i>De facto</i> union (<i>união de facto</i>)	Portugal	Law No. 7/2001 of 11 May, Adopting Measures to Protect Unmarried Couples (<i>Lei n.º 7/2001, de 11 de Maio, Adota medidas de protecção das uniões de facto</i>) Law No. 23/2010 of 30 August, First Amendment to Law No. 7/2001 of 11 May, Adopting Measures to Protect Unmarried Couples (<i>Lei n.º 23/2010, de 30 de Agosto Primeira alteração à Lei n.º 7/2001, de 11 de Maio, que adopta medidas de protecção das uniões de facto</i>)	Yes

Q

2. What are the requirements to be able to enter into the above relationships?

A

(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	None. Same-sex couples may marry in Portugal without the need either to establish residency or to prove Portuguese citizenship with respect to one or both of the prospective spouses and may marry in Portugal even if their home nation will not recognize their marriage.
<i>De facto</i> union	None. However, the advantages of a recognized <i>de facto</i> union may in some cases be limited to couples currently living in Portugal.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Each person must be at least 18 years old (or 16–17 years old with parental consent) and unmarried. They cannot be too closely related to one another; i.e., they must lack both kinship and affinity in the direct line and kinship in the second degree of the collateral line. Neither person can have been convicted of the murder or attempted murder of the other’s previous spouse.
<i>De facto</i> union	<ul style="list-style-type: none"> • There is no formal registration process; the benefits of a <i>de facto</i> union may instead be claimed after the couple has lived together for two years. • Two persons wishing to claim the benefits of a <i>de facto</i> union must be at least 18 years old and cannot be too closely related to one another; i.e., they must lack both kinship and affinity in the direct line and kinship in the second degree of the collateral line. Neither partner can have been convicted of the murder or attempted murder of the other partner’s spouse. If either is married, he or she must be judicially separated. Finally, neither partner may exhibit evident dementia (even if there are lucid moments) at the time the union is claimed.



3. If both marriage and civil unions exist:

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).



(a)	<ul style="list-style-type: none"> • Couples in which one or both persons are 16 or 17 years old may be married with parental consent, while those seeking the benefits of a <i>de facto</i> union must be at least 18. • At the time a couple seeks the benefits of a <i>de facto</i> union, neither of the partners may exhibit dementia.
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(b)	<ul style="list-style-type: none"> • If the partners in a <i>de facto</i> union marry each other, or if one partner in a <i>de facto</i> union marries another person, the <i>de facto</i> union no longer has legal force. • Partners may not claim the benefits of a <i>de facto</i> union if one or both of them are married to other persons, unless a legal separation has occurred.
(c)	<ul style="list-style-type: none"> • Generally speaking, the protections available to and responsibilities imposed on partners in a <i>de facto</i> union are less well developed and more <i>ad hoc</i> than those for married persons. In some cases, protections are available only to those partners in a <i>de facto</i> union who have a child together. • Most significantly, partners in a <i>de facto</i> union do not acquire rights in one another's property as would spouses upon their marriage, and any such protections—e.g., the right of a surviving partner to continue living in the communal home, to claim inheritance from his or her partner's estate, or to claim survivor's benefits from his or her partner's state pension—are provided by statute or case law on a piecemeal basis.



4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	If you are currently married, you cannot marry again.
<i>De facto</i> union	A <i>de facto</i> union will not be recognized where one or both of the partners are married to other persons, unless the spouses in such former marriage(s) have been judicially separated.



5. When a couple comes to Portugal, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Yes. But if the same-sex couple is not married because their home nation does not issue marriage licenses to same-sex couples, their eligibility to marry will be assessed under Portuguese law.
<i>De facto</i> union	No. However, partners who have obtained nonmarriage recognition of their relationship (e.g., a civil union or civil partnership established under foreign law) may seek to have their relationship recognized as a <i>de facto</i> union if they would otherwise qualify to claim that status.



6. How can each form of relationship be dissolved? What is the residency requirement or other link to Portugal for an authority to grant a divorce/ dissolution?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>In Portugal, spouses may seek a divorce either by mutual consent or by a contested action.</p> <p>Mutual consent requires an agreement between the spouses to dissolve the marriage and – for the periods both during the divorce proceedings and afterward – agreements for the payment of maintenance to the spouse in need, the exercise of parental authority with regard to minor children, and the use or disposal of the marital home. There is no requirement for the spouses to provide a reason for their divorce if it is by mutual consent.</p> <p>With respect to contested divorce, one spouse must apply for the divorce in court against the other spouse. Such an application presupposes a culpable violation of marital duties by the spouse against whom the action is brought that is so serious or routine a violation as to compromise the possibility of communal life. However, the applicant spouse may not bring such an action if he or she has encouraged the other spouse to carry out the violation invoked as grounds for the application, has intentionally created the conditions that make the violation more likely to occur, or does not actually perceive the violation as preventing communal life.</p> <p>Other grounds for contested divorce include <i>de facto</i> separation for three consecutive years; <i>de facto</i> separation for one year if the divorce application by one of the spouses is unopposed by the other; a change in the mental faculties of the other spouse lasting for more than three years that is so serious as to compromise the possibility of communal life; and the absence of one spouse, without any news from the absentee, for a period of two or more years. (For these purposes, <i>de facto</i> separation exists when there is no communal life between the spouses and one or both spouses do not wish to re-establish it.)</p>
<i>De facto</i> union	<p>A <i>de facto</i> union can be terminated by the death of one of the partners, by the decision of one of the partners, or by mutual consent. Additionally, the marriage of the partners to one another will cause them to be ineligible to claim the benefits of a <i>de facto</i> union, as will the marriage of one of the partners to another person.</p>



■ Sources:

Primary

- Law No. 9/2010 of 31 May Permitting Civil Marriage Between Persons of the Same Sex (*Lei n.º 9/2010, de 31 de Maio, Permite o casamento civil entre pessoas do mesmo sexo*, available at http://www.cnpcjr.pt/preview_documentos.asp?r=3585&m=PDF).
- Law No. 7/2001 of 11 May, Adopting Measures to Protect Unmarried Couples (*Lei n.º 7/2001, de 11 de Maio, Adota medidas de protecção das uniões de facto*), available at <http://app.parlamento.pt/violenciadomestica/conteudo/pdfs/legislacao/lei72001.pdf>.
- Law No. 23/2010 of 30 August, First Amendment to Law No. 7/2001 of 11 May, Adopting Measures to Protect Unmarried Couples (*Lei n.º 23/2010, de 30 de Agosto Primeira alteração à Lei n.º 7/2001, de 11 de Maio, que adopta medidas de protecção das uniões de facto*), available at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1262&tabela=leis&ficha=1&pagina=1.

Secondary

- Rosa Martins, *Same-sex partnerships in Portugal: From de facto to de jure?*, 4 Utrecht L. Rev. 194 (2008) <https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.74>.
- Cristina González Beilfuss, *All or Nothing: The Dilemma of Southern Jurisdictions*, in *Legal Recognition of Same-Sex Relationships in Europe* 48 (Katharina Boele-Woelki & Angelika Fuchs, eds., 2nd ed. 2012).
- Nuno Piçarra & Ana Rita Gil, Eur. Union Democracy Observatory, EUDO Citizenship Observatory Country Report: Portugal (rev. 2012), available at <http://eudo-citizenship.eu/docs/CountryReports/Portugal.pdf>.