

[Home](#) > ... > [Find a Legal Professional](#) > [Find An Expert](#) > Portugal

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Portugal

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I. Lists and registers of experts

Besides the proceedings provided for in the Expropriation Code, there is no other official list/register of experts in Portugal. The Expropriations Code (approved by Law no. 168/99, of 18 September) provides for the intervention of experts on the list in proceedings relating to the declaration of public utility of an expropriation and proceedings relating to the enforcement of administrative possession, including the arbitration and appeal phases of both proceedings.

The evaluations and examinations carried out by the expert shall, in particular, result in the determination of a fair compensation to be paid to the expropriated party. The amount must be based on the establishment of facts indispensable for the calculation of this compensation.

In accordance with [Decree-Law No 125/2002 of 10 May](#), which governs the conditions for the exercise of the duties of expert and arbitrator in the aforementioned procedures, the [Directorate-General for the Administration of Justice \(DGAJ\)](#), is the Portuguese authority in charge of publishing and updating the [official list of experts](#) and to promote procedures for the selection and recruitment of experts. Experts tasks are in particular:

1. Forecast of charges for the expropriation;
2. Conduct of surveys;
3. Carrying out of evaluations;
4. Participation in arbitration proceedings.

Furthermore, experts are also appointed from the official list in the cases where the law allows the expropriation of movable property, in particular pursuant to Article 16 of [Law 13/85 of 6 July](#) (Portuguese Cultural Heritage Law).

The list of experts is kept up to date by periodic review.

There is no search tool for finding an expert in Portugal.

II. Expert's qualifications

In order to be registered in the list, candidates must fulfill the following requirements:

1. Hold an appropriate degree, as those indicated in the [Order No 788/2004 of 9 July](#);
2. Be a minimum of 18 years of age;
3. Not be banned from the exercise of public office or have not been disqualified for the performance of the duties the expert is required to perform;
4. Possess the physical strength and the mental profile necessary for the performance of the duties;
5. Compliance with mandatory vaccination laws.

III. Remuneration of experts

Experts appointed by courts cannot receive a payment in advance.

The expert's remuneration is ordered in accordance with the provision set in Article 17 of the Regulation on Procedural Costs, approved by [Decree-Law No 34/2008](#) of 26 February, pursuant to Table IV: between 1 and 10 units of accounts (UC) (EUR 102,00 being the value for 1 unit). On 01 February 2017, the Portuguese Constitutional Court declared, with binding force, that the rule preventing expert remuneration above the limit of 10 UC (€ 1.020,00) was unconstitutional because of the principle of proportionality.

In the case of an expert chosen by the judge, the travel expenses are met in advance.

The duty of payment of the experts' remuneration is handled as following:

Civil procedure

The costs of proceedings includes an expert's fee. Each participant shall pay the costs of proceedings incurred by the participant and the costs of his representative. The court shall provide the participant achieving complete success in the matter with the reimbursement of costs necessary for the efficient exercising or defending of a right against a participant unsuccessful in the matter.

If the participant has achieved only partial success, the court shall fairly divide the reimbursement of costs or pronounce that none of the participants shall be entitled to reimbursement. Based on the results of the proceedings, the State shall be entitled to be reimbursed the costs of the proceedings met by the State from the participants if such costs are not expected to be exempted from the court fees.

Criminal procedure

The costs necessary to conduct criminal proceedings, including enforcement proceedings, lie with the State. If the defendant was lawfully convicted, they are required to repay the State a flat amount of other expenses, regarding, for example, transport expenses or exams conducted by laboratories, which have been initially covered by the State. However, the flat amount requires that the expert's report was requested during the procedure.

There is no way for the parties to obtain legal aid with regard to the Expert's remuneration.

IV. Liability of experts

The regulations of Portugal do not contain a particular provision dealing with the expert's liability but general regulations (tort/contractual law) are applicable.

Nevertheless, the expert is required to perform his duties with due diligence in order to maintain his appointment, as the judge may impose a fine in the event that the expert breaches the duty to cooperate with the court. The court may also remove the expert from the proceedings if the expert's action is deemed negligent (for example, in the case when he fails to submit the expert's report within the prescribed time-limit).

The appointed experts must assume a firm commitment to ensure that the task assigned to them is honoured, unless they are civil servants and it intervenes in the performance of their duties.

Experts are not obliged to cover their possible liability via professional indemnity insurance.

Expert's liability is not subject to a cap by law.

V. Additional information about expert proceedings

The main legal provisions applicable to judicial expertise in Portugal are Articles 467-489 of the [Civil Procedure Code](#) and Articles 151- 163 of [Penal Procedure Code](#). There is no English version of the provisions accessible online.

General rules for the appointment of an expert for the purpose of proceedings in front of a civil, criminal and administrative court are similar. The title of expert is not protected.

The legal system of Portugal does not distinguish between expert witnesses, technical experts, law experts or

any other kind of experts.

As stated above, apart from the one relating to the experts appointed under the Expropriation Code, there is no other official list of experts. Experts are frequently used, both in criminal and civil proceedings.

1 Appointment of experts

In civil proceedings, experts only can be appointed by a court. In criminal proceedings, during the investigation phase, experts can be appointed by the prosecutor.

Experts can also be appointed for the purpose of preliminary or pre-trial proceedings.

1.a Appointment by a court

A court may appoint an expert upon the request of a party or upon the court's own discretion. In the litigious procedure the court orders expert evidence if the decision depends on the assessment of the facts for which scientific knowledge is required.

There are no differences between the appointment of an expert for the purpose of proceedings before a civil, criminal and administrative court.

The causes for the prevention and legal dispensation of the function of an expert may be claimed by the parties and by the designated expert himself, depending on the circumstances.

The rules pertaining to the challenge of judges shall apply *mutatis mutandis*.

The holders of the sovereign bodies or the equivalent bodies of the Autonomous Regions are exempt from the exercise of the function of expert. The same is valid for those who, by law, have a similar statute, like the public prosecutors in the exercise of their duties and the diplomatic agents of foreign countries.

All persons who invoke personal reasons may be excused from intervention as experts.

When experts are appointed by the court, the court uses a list or register of experts to select them, except in the area of medical expertise, which is legally attributed to a public institution: [Instituto Nacional de Medicina Legal e Ciências Forenses](#).

Appointing an expert from the register is a practice widely followed by the court.

1.b Appointment by the parties

The court may appoint an expert upon the request of a party or upon the court's own discretion. In the litigious procedure the court orders expert evidence if the decision depends on the assessment of the facts for which scientific knowledge is required.

The parties do not have the right to appoint an expert - only to suggest one.

The parties can appoint an expert in joint expertise in civil proceedings. In these cases, a court appointed expert will work together with one or more experts appointed by the parties.

2 Procedure

2.a Civil Procedure

There are no specific requirements that an expert needs to adhere to in their report and/or court proceedings as, for example, in case law.

The court doesn't monitor or control the progress of the expert's investigations. Where, for technical or professional reasons, the report cannot be produced within the time limit set by the judge, the court must be immediately notified in order to appoint a new expert as soon as possible.

There is no quality control on the performance of the expert.

The court is not bound by the expert's opinion. The court may consider otherwise and decide differently than the expert's opinion. However, the disagreement must be grounded on technical reasons and be justified.

There is no procedure whereby experts meet prior to trial or are cross-examined prior to the trial to seek to narrow the issues and for the court to understand the differences of opinion.

Parties may assist and make observations available to the expert for consideration. They shall also provide any explanations which the expert deems necessary. If the judge is present during the expertise proceedings, they may also make requests which they deem fit in the context of that specific proceeding.

The experts may use all means necessary in order to appropriately perform their duties, exercise the appropriate measures or clarifications and ask for access to information on the process files.

Especially, the expert does not have to hold meetings with the parties in order to collect their comments.

1. Expert report

There is no mandatory framework the Expert has to follow in his or her report.

In the case of a collegial expertise, if there is no unanimity, the opposing experts shall offer the reasoning behind their position.

Experts are not required to provide a preliminary report.

Experts are only obliged to address the parties' arguments in the final report.

There are no other specific requirements that an expert needs to adhere to in their report and/or court proceedings as, for example in case law.

There are cases where the Expert has to produce an additional report if the court raises additional questions or requires the expert to clarify the report.

Experts deliver their report in writing.

2. Court hearing

If either of the parties so requests or if the court so requires, the experts appear at the final hearing in order to offer, under oath, the explanations requested from them.

2.b Other

(the answers to these questions are given in other parts of the sheet here - below is the full duplication)

There are no other specific requirements that an expert needs to adhere to in their report and/or court proceedings as, for example in case law.

The court doesn't monitor or control the progress of the expert's investigations.

There is no quality control on the performance of the expert.

Parties can challenge the report with statements and by providing a counter-expertise before the court decides on the case.

The court is in principle bound by the expert's opinion. When the court decides otherwise, it must justify its disagreement with the expert opinion.

There is no procedure whereby experts meet prior to trial or are cross-examined prior to trial to seek to narrow the issues and for the court to understand the differences of opinion.

Experts are allowed to be in contact with the parties during the proceedings.

The parties may generally be present during the conduct of the expertise investigations , and can make comments and respond to the questions of experts.

Especially, the expert does not have to hold meetings with the parties in order to collect their comments.

The information presented here was gathered during the Find an Expert Project from contacts per country selected by the [European Expertise & Experts Institute EEEI](#).

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