



REAL ESTATE, PLANNING AND TOURISM

Coronavirus: Impact on lease agreements and store use agreements

On 11 March 2020, the World Health Organization declared a public health emergency of international concern (PHEIC) following the spread of SARS-CoV2 (Coronavirus) and disease it causes, Covid-19. Subsequently, on 18 March 2020, a state of emergency was declared in Portugal.

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Against this background, a legislative package has been approved and published, and this package has established exceptional and temporary measures relating to the spread of COVID-19. The most important pieces of legislation are:

- o Decree Law 10-A/2020 of 13 March and Ministerial Order 71/2020, which followed it on 15 March, restrict (i) public access to retail establishments, large supermarkets and shopping complexes to a maximum occupancy of 0.04 persons per square metre, and (ii) public access to restaurants, cafés, bars and similar establishments to one-third of their capacity;
- o Law 1-A/2020 of 19 March, which suspended the effect of any notices to terminate lease agreements for residential and non-residential purposes given by the landlord until the end of the measures to prevent, contain, mitigate and treat the spread of epidemiological infection by SARS-CoV-2 and the disease COVID-19, as determined by the national authority for public health; and
- o Decree 2-A/2020 of 20 March, which implemented the declaration of a state of emergency. This Decree imposed:
 - i) The closure of certain premises and establishments listed in Annex I to this Decree that were used for (i) recreational, leisure and entertainment activities; (ii) cultural and recreational activities; (iii) sporting activities; and (iv) activities in open spaces and in public spaces and roads, or private spaces and private roads equated to public roads; (v) spaces for gaming and betting; (vi) restaurant activities; and (vii) thermal baths and spas or similar establishments;
 - ii) The suspension of retail trade, except or the provision of essential items or other goods deemed to be essential. These are listed in Annex II to the Decree;
 - a) This suspension does not apply to wholesale establishments or to establishments wishing to maintain their activity exclusively for home deliveries or delivery of goods to the door of the establishment or to the service hatch;
 - iii) The suspension of the provision of services in premises open to the public, except for those that provide essential services and other services considered essential, which are listed in Annex II to this Decree;
 - a) Restaurants and similar establishments can continue to operate exclusively to prepare food for consumption off the premises or for home delivery;
 - b) This suspension does not apply to canteens that are in regular operation or to mass catering units whose services are provided under a contract of continued performance;

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- i) The non-suspension of retail trade activities and the provision of services located along the motorway network, and inside airports and hospitals;
 - ii) The provision that the closure of facilities and establishments under the Decree cannot be invoked as grounds to resolve, terminate or in any other way to put an end to non-residential lease agreements or other contractual forms operating properties. Nor can it be used as grounds to vacate properties where facilities and establishments operate.
- o Analyse their contracts;
 - o Identify situations which, depending on the impact of the current situation and the unpredictability of how long it will last, should be subject to negotiation / review.
 - o Identify situations that have a specific or mandatory contractual and/or legal framework.
 - o Proactively contact the other party to seek to agree (i) an amendment of the contractual conditions, or (ii) a new agreement and/or an addendum to an existing one. The aim of this is to ensure the contractual balance is maintained, and to ensure the agreement itself is maintained so that operations can start again as soon as things go back to normal.

In the short and medium-term, the measures introduced will have consequences for the vast majority of sectors, and they will have a particular impact on trade in non-essential items and affect all market players (landlords, tenants, and store owners, etc.)

In relation to existing agreements, companies should proactively assess the impact of the COVID-19 pandemic and, in particular, of the measures adopted, on their ability to meet the contractual obligations they have assumed. They should then consider adopting solutions that restore the balance of the contractual relationship.

This assessment will, of course, require a close analysis of the contractual provisions in force and of the legislation that applies to them.

In this context, as a way to prevent situations of breach of contract and/or mitigate potential conflicts arising from any breaches, the parties should seek to:

"The aim of this note is to address the impact of the current situation on commercial lease agreements and other contracts for the use of commercial premises."

Depending on how the current situation develops, other legislative measures could be introduced and their impact on contracts should be examined on a case-by-case basis at any given moment

Finally, this text provides general information and does not dispense with need to seek specific advice from a lawyer. Each case will always require a careful analysis of the contract in question, the validity of its clauses, and whether it can be demon-

strated that the COVID-19 pandemic is a direct cause of the fact it is impossible to perform the contractual obligations. We also advise prospective buyers and sellers to record and document the negotiations that take place between them. ■