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REAL ESTATE, PLANNING AND TOURISM

Coronavirus: Rent moratoriums and suspension of 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 the disease it causes, Covid-19.

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A state of emergency was declared in Portugal by Decree of the President of the Republic 14-A/2020 of 18 March and was renewed by Decree of the President of the Republic 17-A/2020 of 2 April. Following such declaration, exceptional and temporary measures have been adopted in relation to the COVID-19 pandemic.

In this context, Law 4-A/2020 of 6 April and Law 4-C/2020 of 6 April have recently been approved. These laws have an impact on lease agreements and Law 4-C/2020 of 6 April also impacts other contractual relationships involving the operation of properties for commercial purposes.

1. Law no. 4-A/2020 - termination of lease agreements

Law 1-A/2020 of 19 March had created a set of exceptional and temporary measures in response to the COVID-19 pandemic and Law 4-A/2020 of 6 April now adds exceptional and temporary rules on the expiry and opposition to the renewal of residential and non-residential lease agreements.

The new wording of article 8 of Law 1-A/2020 of 19 March, as amended by article 2 of Law 4-A/2020 of 6 April, provides that – while the measures to prevent, contain, mitigate and treat the COVID-19 pandemic remain in place (as determined by the public health authorities) and until 60 days after the end of the measures – the following are suspended:

- The expiry of residential and non-residential lease agreements, unless the tenant has no objection to the termination of the agreement;
- The taking of effect of any revocation or opposition to renewal of residential and non-residential lease agreements by the landlord;

"Law 1-A/2020 of 19 March, in its original wording, had already suspended the effect of any notices to terminate residential and non-residential lease agreements given by the landlord."

- The period of six months provided for in article 1053 of the Civil Code (i.e., the period at the end of which the landlord can require the return of the property once the expiry of the agreement is confirmed) if this period ends while the above measures are in force.

Law 1-A/2020 of 19 March, in its original wording, had already suspended the effect of any notices to terminate residential and non-residential lease agreements given by the landlord until the end of the measures to prevent, contain, mitigate and treat the spread of COVID-19, as determined by the national authority for public health.

Furthermore, Law 1-A/2020 of 19 March suspended eviction actions, special eviction procedures, and actions to regain possession of leased property, when, pursuant to the final judicial decision, the tenant could be placed in a vulnerable position by being made homeless. Now, this suspension also applies when a situation of vulnerability results from some other overriding social reason.

2. Law no. 4-C/2020 - deferment of payment of rents

Law 4-C/2020 of 6 April has created exceptional arrangements for situations of arrears in the payment of (i) rent due under urban lease agreements, for residential and non-residential purposes, or (ii) the remuneration payable under other contracts to operate properties for commercial purposes. These provisions apply to rents or other payments due from 1 April 2020 and they apply in the following situations:

i) **In the case of residential leases, the arrangements apply when:**

a) There has been a decrease exceeding 20% in the income of the **tenant's household** in relation to the previous month's income or to the same period of the previous year, and the effort rate of the tenant's household, calculated as a percentage of the income of all members of that household intended for the payment of rent, is or becomes greater than 35%;

or:

b) There has been a decrease exceeding 20% in the income of the **landlord's household** in relation to the previous month's income or to the same period of the previous year, and the percentage decrease in income is caused by non-payment of rent by the tenant under the provisions of the said law.

When the tenant is in the situation described above, the landlord may not terminate the lease agreement for non-payment of the rent due in the months in which the state of emergency is in place and in the first subsequent month, if the tenant makes the payment in question within 12 months of the end of that period. The payment must be made in monthly instalments of not less than one twelfth of the total amount together with the rent for each month.

Law 4-C/2020 of 6 April also establishes financial support measures for residential tenants and the guarantors of residential tenants, when they are students, and provided that the subjective requirements of application of these exceptional arrangements are met by the guarantors. These financial support measures include interest-free loans from the Instituto da Habitação e da Reabilitação Urbana, I.P. (IHRU, I.P.). (Institute for Housing and Urban Rehabilitation). Residential landlords who can prove they have suffered the fall in income referred to in b. above, when the tenants do not obtain a loan from the IHRU, I.P., may also apply to an interest-free loan to compensate for the value of the monthly rent due and not paid, when the remaining disposable income of the household falls below the Social Support Index (SSI) for this reason.

Importantly, tenants are subject to a duty of information if they want to benefit from these arrangements. The tenant must inform the landlord in writing no later than five days prior to the date the first rent is due, if they want to benefit from the arrangements described above. They must enclose the documentation necessary to prove their situation in the terms of the Ministerial Order 91/2020, 14 April. In cases where the rent is payable on 1 April 2020, this communication must be made within 20 days of the entry into force of this law.

"The tenant must inform the landlord in writing no later than five days prior to the date the first rent is due, if they want to benefit from the arrangements described above."

"The tenants and users of properties covered by this legislation can defer the payment of rents or remuneration (as applicable) due in the months in which the state of emergency is in place and in the first subsequent month. The rent must be paid in the 12 months after the end of that period."

Ministerial Order 91/2020, 14 April also establishes how to demonstrate the fall in income that determines the application of these arrangements to residential tenancies. Moreover, the IHRU, IP will also have to issue a regulation to determine the conditions for granting the loans referred to above. These regulations will take effect from the date they are published on the Housing Website (*Portal da Habitação*), following approval by the governing board of the IHRU, IP, which is subject to approval by the member of the Government responsible for housing

ii) **In the case of non-residential tenancies** and other contractual forms of operation of properties for commercial purposes, the arrangements apply to the following establishments:

a) **Establishments open to the public for retail trade activities and the provision of services that are closed or have their activities suspended** under Decree 2-A/2020 of 20 March, or by legislative or administrative determination, or under Civil Protection Law, the Health Law, or other provisions to implement the state of emergency. These establishments still benefit even if they continue to operate using e-commerce, or to provide services at a distance or through an electronic platform; and

b) **Restaurants and similar establishments**, including cases in which they continue to operate exclusively to prepare food for consumption off the premises or for home delivery.

The tenants and users of properties covered by this legislation can defer the payment of rents or remuneration (as applicable) due in the months in which the state of emergency is in place and in the first subsequent month. The rent must be paid in the 12 months after the end of that period, in monthly instalments of not less than one twelfth of the total amount. These instalments must be paid together with the rent for the month in question. These tenants do not have to pay any penalties based on late payment of rent due in the above period.

In addition, the non-payment of rents by tenants or users of property that qualify for the above right of deferment, in the months in which the state of emergency is in place and in the first subsequent month, cannot be invoked by non-residential landlords or owners of buildings that are operated for commercial purposes as a basis to resolve, terminate or extinguish the agreement or to oblige the tenant or user to vacate the property.

iii) **If the landlord – or the owner of the property operated for commercial purposes – is a public body**, while this law is in force, it may:

a) reduce the rents for tenants who can prove they have suffered a fall in income of greater than 20 % compared with the previous month's income or the income of the same period of the previous year, when this results from an effort rate exceeding 35 % in relation to the rent. However, this does not apply when the tenants or users of the property are beneficiaries of special residential lease or rent arrangements, such as rent support and social rent;

- b) exempt tenants from payment of rent if they can prove they have ceased to earn income after 1 March 2020; or
- c) establish moratoriums for their tenants.

iv) **In all lease agreements – residential or non-residential:**

The right of landlords – residential or non-residential – to demand the compensation provided for when the tenant is in arrears in accordance with the legislation is suspended for the rent payments due in the months the state of emergency is in place and in the first subsequent month. Moreover, landlords do not have the right to refuse rent payments after the due date.

v) **In all lease agreements or agreements to operate properties – residential or non-residential:**

The termination of the agreement at the initiative of the tenant/user of the property means the immediate payment of rents / remuneration due and not paid becomes enforceable from the date of termination, under the terms of Law 4-C/2020 of 6 April. ■

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