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REAL ESTATE AND TOURISM

Coronavirus: New measures to support tenants

The Covid-19 pandemic has led to the adoption of a set of exceptional and temporary measures to prevent the spread of SARS-CoV-2 and to the introduction of various forms of support intended to mitigate the economic impact of this situation.

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In particular, the following legislation has been approved in the real estate sector:

- o **Law 1-A/2020 of 19 March** (successively amended), which established, among others, a temporary suspension of the effects of termination of tenancy/lease agreements;
- o **Law 4-C/2020 of 6 April** (successively amended), which established exceptional rules for situations of late payment of rent and remuneration due under lease agreements and other forms of agreements for commercial operation of real estate.¹

Law 75-A/2020 and Decree-Law 106-A/2020 were published on 30 December 2020. These laws introduced the seventh amendment to Law 1-A/2020 of 19 March and the third and fourth amendments to Law 4-C/2020 of 6 April. The aim was to strengthen and ensure support for landlords and tenants of residential and non-residential property, and parties to agreements to commercially operate real estate.

"Extension until 30 June 2021 of the suspension of (i) the effects of termination of lease agreements (when terminated by the landlord); and (ii) mortgage foreclosure (permanent residence of mortgage debtor)."

Law 75-B/2020 of 31 December, which approved the State Budget for 2021, also added the new article 8-B to Law 4-C/2020 of 6 April. This new article makes it possible to reduce the fixed or minimum remuneration payable by tenants of stores and other establishments open to the public in shopping centres.

I. Extension of the extraordinary arrangements to protect tenants

Law 75-A/2020 of 30 December amended article 8 of Law 75-A/2020. Law 1-A/2020 of 19 March determined the extension to 30 June 2021 (previously 31 December 2020) of the suspension of (i) the effects of termination notices issued by landlords regarding residential and non-residential leases; (ii) the expiry of residential and non-residential leases; (iii) the effects of the revocation or opposition to renewal of residential and non-residential leases made by the landlord; (iv) the period for handing over possession of property provided for in article 1053 of the Civil Code. (iv) the period for handing over possession of property provided for in article 1053 of the Civil Code, if termination occurs during the period in which the above measures are in force²; and (v) the foreclosure of a mortgage on a property that is the permanent residence of the mortgage debtor.

The suspension described above depends on the regular payment of the rent due in the month in question, unless the tenants are covered by the rules set out in articles 8 or 8b of Law 4-C/2020 of 6 April, in its current wording (by reference to rent due from October 2020 to June 2021).

¹ For further details on the successive versions of these laws, see [Coronavirus: Rent moratoriums and suspension of agreements - Informative Notes - Knowledge - PLMJ Transformative legal experts](#) and [Coronavirus: Payment of rents and other remunerations - Deferral and new rules - Informative Notes - Knowledge - PLMJ Transformative legal experts](#).

² *The prevention, containment, mitigation and treatment of epidemiological infection by SARS-CoV-2 and the Covid-19 disease, as determined by the public health authority, in accordance with the original wording of Law 1-A/2020.*

Law 75-A/2020 of 30 December clarifies that the suspension of the effects of the above mentioned acts can cease (i) if opposed by the (residential or non-residential) tenant, or (ii), automatically, if the tenant is in arrears in payment of the rents due as from the date of reopening of the establishment³, unless the rents have been deferred.

iv) ceases, at any time, if the tenant declares to the landlord that it does not wish to benefit from it, or if the tenant is in default in payment of the rents due as from the date of reopening of the establishment, unless they have been deferred.

II. Special arrangements for shops, restaurants or service providers that remain closed

1. Extension of the term of the agreement

Law 75-A/2020 of 30 December amends article 8 of Law 1-A/2020 of 19 March to determine the automatic extension of non-residential lease agreements for establishments which, by legal or administrative order for which the Government is responsible, were closed in March 2020 and which still remain closed on 1 January 2021. This extension:

- i) operates for the duration of the closure order, with the suspension of effects provided for in I. above applying during the extension;
- ii) is counted from the original termination of the agreement and may never result in a new period of the agreement that comes to an end before 6 months have passed from the lifting of the closure measure;
- iii) depends on the actual payment of the rents falling due from the date of reopening of the establishment, unless they have been deferred;

“Agreements are extended for a period equal to the duration of the closure measure and may not result in a new period that terminates before 6 months have passed from the lifting of the closure measure”.

2. Special arrangements for deferment of rent payment

Law 75-A/2020 of 30 December also added article 8-B to Law 4-C/2020 of 6 April. This new article establishes special arrangements for deferment of rent payment that apply to retail or service establishments open to the public, or catering establishments (covered by article 7 of the Law), which have been closed, by legal or administrative order of the Government, since at least March 2020, and still remain closed on 1 January 2021.

³ See Section II. 1.

“Tenants of establishments that remain closed on 1 January 2021 may defer not only the payment of rent due in 2020 but also rent due in 2021 during the months they are closed”.

The arrangements previously in force already allowed the deferral of the payment of rents due between 1 April 2020 and the third month following the month in which the imposition of closure or suspension of activity was lifted. However, it also provides that the deferral could not apply to rents due after 31 December 2020. These deferred rents must be paid within 24 months, starting on 1 January 2021 and extending until 31 December 2022.

However, tenants of establishments that remain closed on 1 January 2021 are now given the right to:

- i) again defer payment of rents due in 2020, which had already been deferred; and
- ii) request the deferment of the payment of rents due in 2021 corresponding to the months in which the establishments are closed.

The period for paying the debt corresponding to the rents subject to this deferment only begins on 1 January 2022 and continues until 31 December 2023.

The payment must be made in 24 successive and equal instalments to be paid together with the rent for the month in question or up to the eighth calendar day of each month if the rent is not monthly.

To benefit from the special right to defer payment of the rent, tenants who meet the requirements for its application must communicate their intention to the landlord by registered letter with acknowledgement of receipt ⁴, no later than 20 January 2021, with retrospective effect from 1 January 2021, if the communication is subsequent to that date.

In this case too – and as previously provided – if the tenant requests the deferment of the payment of the rents as mentioned above, landlords can ask to be granted a credit line with reduced costs by reference to the rents for the year 2020 and also 2021, which are due and not paid.

3. Other forms of operation of properties and establishments that are part of commercial complexes

The rent deferral arrangements apply to other forms of operation of real estate besides the lease agreement for non-residential purposes. Therefore, the references to landlord, tenant and rents are also intended to include the corresponding figures resulting from other contractual forms.

However, the legislature has expressly stated that the arrangements described in this section II do not apply to establishments in commercial complexes that – meeting the other conditions for the application of these special arrangements – benefit, for the year 2021, from a reduction or discount in the remuneration due under the agreement.

⁴ Sent to the address given in the lease agreement or in the immediately preceding communication.

III. Leases for non-residential purposes and other contractual forms of operation of real estate properties - Non-refundable support

Law 75-A/2020 of 30 December also added article 8-C to Law 4-C/2020 of 6 April to support tenants that operate retail or service establishments open to the public or catering or similar establishments whose operations have been shut down or suspended under article 7 of Law 4-C/2020 of 6 April. Tenants can access this support if, in the year 2020, they have suffered (a) a fall in turnover of between 25% and 40% or (b) a fall in turnover of more than 40%. Tenants meeting these requirements receive non-refundable support equivalent to, respectively (a) 30% of the value of the rent, with a limit of EUR 1200 per month, or (b) 50% of the value of the rent, with a limit of EUR 2000 per month.

“Tenants that are covered and, in the year 2020, have suffered a fall in invoicing of more than 25% have the right to non-refundable support”.

IV. Other changes to the exceptional rules for situations of late payment of rent under residential leases

1. Scope of application

Decree-Law 106-A/2020 of 30 December and Law 75-A/2020 of 30 December extended the scope of the arrangements set out in Law 4-C/2020 of 6 April with regard to residential tenancy agreements.

These arrangements apply when the following requirements are met: (a) a fall of more than 20% in the income of the tenant’s household compared to (i) the month of February 2020, (ii) the previous month, or (iii) the same period of the previous year; and (b) the effort rate of the tenant’s household, calculated as a percentage of the income of all members of that household earmarked for the payment of the rent, is or becomes more than 30% (and no longer 35%).

2. Financial support

Decree-Law 106-A/2020 of 30 December also added paragraphs 2 to 5 to article 5 of Law 4-C/2020 of 6 April. These new provisions allow borrowers of low-income loans whose rate of effort to pay the rent is or becomes greater than 35% to apply for non-reimbursable financial contributions.

However, the right of landlords to be granted loans by the IHRU, I.P. has been revoked.

Decree-Law 106-A/2020 of 30 December also creates obligation to report quarterly updated information on the loss of income of residential tenants on which the ability to benefit from these arrangements depends.

V. Reduction in the fixed or minimum remuneration payable by tenants of establishments open to the public in shopping centres

Law 75-B/2020 of 31 December, which approved the State Budget for 2021, also added a new article 8-B to Law 4-C/2020 of 6 April ⁵.

This new article establishes that the fixed or minimum monthly remuneration payable by tenants of stores in shopping centres is reduced in proportion to the reduction in monthly turnover, up to a limit of 50% of the value of the monthly turnover. This reduction applies when these stores suffer a fall in their monthly turnover, compared to (i) the turnover for the same month of the year 2019, or, failing that, (ii) the average turnover of the last six months prior to the Decree of the President of the Republic 14-A/2020 of 18 March, which decreed a state of emergency, or of a shorter period, if applicable.

This reduction will apply during the first quarter of 2021 and may be extended by order of the Government until 30 June 2021 if the exceptional situation of prevention, containment, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and Covid-19 extends beyond this period.

VI. A final note...

The legislature has also made it clear that the unenforceability (under Law 4-C/2020 of 6 April) of the compensation for late payment of rent provided for in article 1041(1) of the Civil Code applies to the months in which the deferment is possible under the legislation, and not only during the term of the state of emergency and the first month thereafter, as previously established. ■

⁵ Since Law 75-A/2020 of 30 December also added an article 8-B to Law 4-C/2020 of 6 April, clarification on the systematisation of the new rules approved is awaited.