



Tax & Business Lawyers



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NEWSLETTER

MEASURES RELATED TO THE LEASES OF REAL ESTATE AND LOCAL ACCOMMODATION (ALOJAMENTO LOCAL) UPDATE

SUMMARY

Following the presentation of the program “Mais Habitação”, and after the Public Consultation regarding such program, the Portuguese Government have finally published the Law Proposal no. 71/XV/1.ª, including a proposal of concrete measures that, among others, intend to amend the legal regimes of the Alojamento Local (AL) and the lease of Real Estate and, also, the review of the Special Eviction Procedure (Procedimento Especial de Despejo e da Injunção) and Injunction in relation to leases of Real Estate.

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INTRODUCTION

1. Following the presentation of the program “Mais Habitação”, and after the Public Consultation regarding such program, the Portuguese Government have finally published the Law Proposal no. 71/XV/1.^a, including a proposal of concrete measures that, among others, intend to amend the legal regimes of the Alojamento Local (AL) and the lease of Real Estate and, also, the review of the Special Eviction Procedure (Procedimento Especial de Despejo e da Injunção) and Injunction in relation to leases of Real Estate.

LOCAL ACCOMMODATION (ALOJAMENTO LOCAL)

2. The main proposals with impact to the AL are the following:

- the introduction of an incentive for owners transferring their properties from AL into the lease of Real Estate;
- the license number of the AL is personal and non-transferable;
- the license of the AL is valid for 5 years, renewal for the same period;
- the first renewal is valid from the date of the prior communication to Turismo de Portugal, I.P. and is dependent from the decision of

- the mayor of the competent municipality;
- the suspension of new AL licenses in all the Portuguese territory for flats and accommodation units, except for the municipalities that are located in the rural areas of Portugal;
- the registry numbers issued upon the date of enforcement of the new legislation will be reviewed during 2030, being renewable for 5 years after its first review, except for the AL properties that are a collateral security (garantia real) in loan agreements entered into until February 16th, 2023, and that were not settled until December 31st, 2029;
- the holders of an AL license will be demanded to proof the maintenance of their activity, namely the exploration of AL properties, within 2 months starting from the date of enforcement of the new legal regime;
- if the AL activity is exercised in an autonomous unit of a building of part of an urban building that could be used independently, the condominium assembly meeting may, typically, oppose to the exercise of the AL activity in such unit, except when the incorporation title expressly foresees the use of

that unit for AL purposes or if there was a resolution issued by the condominium assembly authorizing the use of the unit for AL purposes; and, finally,

- the granting of supervisory powers to ASAE, to the City Hall and to the municipality of the location of the property.

LEASE OF REAL ESTATE

3. In relation to the lease of urban real estate, the measures included in the proposal set out, essentially, the limits of the increase of the leases of real estate.

The protection of the tenants with lease agreements entered prior to 1990 is proposed.

In the context of the lease agreements referred above, if the tenant proves that his/her rectified annually gross income (RABC) of his/her family household is lower than five annual minimum salaries (RMNA) or proves that (i) is 65 years old or older or a disability with an established degree of disability of 60% or (ii) who has resided for more than five years in the leased premises, spouse, common law partner or relative of the tenant in the first degree of straight line, who is who is in one of the

above-mentioned conditions the above-mentioned conditions, being the RABC of the family household lower to five RMNA, the lease agreement is not converted into the NRAU (Novo Regime do Arrendamento Urbano) legal regime, being the rent updated by reference to the annual rent update coefficient for the several types of leases, which is the result of the total variation of the consumer price index, without housing, corresponding to the last 12 months, calculated by the Instituto Nacional de Estatística, according to the provisions set forth in article 24 of the NRAU.

4. As for new leases of Real Estate, which have as their object properties covered by previous leases entered in the last five years, the criteria for establishing the amount of the rent are determined:

- the initial rent may not exceed the value of the last rent practiced on the same property in a previous contract, plus a coefficient of 1.02;
- the annual coefficients pursuant to Article 24 of Law nr. 6/2006, of February 27 can be applied, as long as no more than three years have elapsed since the date on which their application would have been initially possible;

- in the case of properties that are subject to major remodeling or restoration works, duly certified by the City Hall, the value relative to the corresponding expenses borne by the landlord may be added to the initial rent of the new lease contracts, up to an annual limit of 15%.

It is also proposed that the rent update coefficient to be considered for the year 2023 be 1.0543.

5. In the procedural scope, a revision of the Special Eviction Procedure (Procedimento Especial de Despejo e da Injunção) and Injunction in relation to leases of Real Estate is proposed, with the purpose of simplifying, speeding up and improving the functioning of these mechanisms, through the creation of the Tenant and Landlord Counter (BAS) and reinforcing the parties' guarantees, notably through the payment by the State of the rents due after the end of the opposition period, when:

- the termination of a lease agreement over a Real Estate is based on the tenant's default;
- the petitioner has requested the payment of rents, charges or expenses that are to be paid by the

tenant, cumulatively with the eviction petition; and

- the tenant has not put an end to his delinquency within a period of one month.

VACANT PROPERTIES

6. The Draft Law provides for the inclusion in the Portuguese legal system, except for the Autonomous Regions, of a forced lease mechanism for vacant properties.

Urban buildings or autonomous fractions which are unoccupied for a period of two years are considered vacant.

In effect, evidence of this vacancy is the inexistence of supply or telecommunications contracts in these properties, as well as the inexistence of the correspondent invoicing in cases where the existence of such supply or telecommunications contracts is verified.

It is also important to point out that the Draft Law establishes a negative delimitation of the concept of vacant properties, with properties not considered vacant under the following conditions:

- those intended for housing for short periods on beaches, countryside, spas and any other places

of vacation, for temporary rental or for one's own use;

- those during the period when rehabilitation works are being carried out, as long as they are certified by the municipalities
- those whose construction conclusion or issuance of the license for use occurred less than a year ago;
- those acquired for resale by individuals or legal entities, and which have benefited or will benefit from the exemption of the municipal tax on the onerous transfer of real estate (IMT) and during the period of 3 years as of the date of acquisition;
- those who are the residence in national territory of a Portuguese emigrant; and
- those that are the residence in national territory of a Portuguese citizen who is performing public functions or commissions abroad in the service of the Portuguese State, international organizations, or functions of recognized public interest, as well as their respective authorized accompanying persons.

7. It is the municipalities that oversee the first impulse in the forced lease procedure.

In this measure, the municipalities, armed with the information that certain properties may be qualified as vacant, notify the owner of the duty to maintain his fraction, so that he may promote the execution of the necessary works, or of the duty to give use to the fraction.

Once the owner has been notified of the maintenance duty, if the owner does not carry out the works that are deemed necessary, the municipalities themselves will promote the execution of such works, and the reimbursement of the works will be made through the receipt of the rents due.

On the other hand, once the owners have been notified of their duty to put the fraction to use, the municipalities may immediately present a lease proposal.

The amount of the rent in the lease proposal may not exceed 30% of the general rent price limits per type according to the municipality where the property is located.

If the rental proposal is made and the landlord refuses or does not respond within 90 days and the property remains vacant, a forced lease will be in place.

Thus, if the property can be considered vacant, a mechanism is proposed that

contains two lease relations: (i) the lease relation established between the owner of the vacant property and the municipalities; and (ii) the lease relation established between the municipalities and the citizen beneficiary of the measure.

If the municipalities do not wish to lease the property and if they do not need to undertake works, the power to activate the forced lease mechanism for vacant properties is transferred to the IHRU, I.P.

Finally, it should be noted that if municipalities waive the power to notify owners of vacant fractions of the duty to maintain the property or of the duty to put the fraction to use, the application of the aggravated rates of municipal property tax ceases, the proceeds of which constitute revenue for the municipalities.

CONCLUSIONS

8. The Draft Law presented by the Government includes a package of measures that will imply the amendment of the Legal Regime of Local Lodging and of the Housing Lease as well as the revision of the Regime of the Special Eviction Procedure and of the Injunction in matters of lease.

The proposed measures will now be discussed and approved by the Portuguese Parliament and may still undergo amendments.

In this sense, we will monitor their discussion and approval, which will allow us to assess the maintenance of the measures presented.

Lisbon, april 24, 2023

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