

## Real Estate - Portugal

### Amendments to urban lease regime

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#### Introduction

The 2012 urban lease regime reform reflected a commitment to boost the lease market and increase the supply of lease agreements at affordable prices. It was part of a set of policy measures to speed up urban real estate rehabilitation in a streamlined manner.

However, monitoring of compliance with the rules imposed by the legislative reform revealed some aspects of the lease regime which could and should be improved, in particular:

- the transition from older lease agreements to the new regime; and
- lease agreements for social purposes.

Accordingly, on December 19 2014 three legal instruments were published amending the laws applicable to lease agreements:

- Law 79/2014 amending the law on urban leases;
- Law 80/2014 establishing a system of conditional rent of leases for housing purposes; and,
- Law 81/2014 on the new supported lease regime for housing.

#### New urban lease regime

The changes made by these legal instruments are intended to respond to a set of procedural constraints which have proven to be particularly burdensome for tenants, as well as correcting some aspects of non-housing leases that deserved some further consideration from the legislature.

The new regime requires that a landlord must inform a tenant at the start of the process to update the rent agreement about the consequences of not responding or responding belatedly in order to avoid situations where the tenant does not respond to the landlord's communication without knowing that the law considers a lack of response to be equivalent to acceptance of the landlord's rent proposal.

In terms of protecting tenants, the legislature has reinforced the mechanisms already provided for in the original regime by:

- establishing the tenant's right to appeal any tax valuation of real estate on the grounds that an assessment may be used to calculate the chargeable rent amount; and
- increasing the protection conferred on disabled tenants in the special regime as there are more circumstances that trigger the application of such a regime.

Further, the specificities of non-housing lease agreements which were executed before Decree-Law 257/1995 entered into force on September 30 1995 are carried over into the new regime. Hence, the legislation aims to strengthen support for economic activities and employment to allow tenants to broaden the scope of circumstances that may justify the application of a protective regime during the transitional period provided by law (eg, the concept of microentities is substantially expanded to include companies with up to 10 employees and a turnover up to €2 million per year).

Thus, when non-housing tenants benefit from the protection regime and there is no agreement between the parties, the agreement is deemed to have been entered into for three years after the transitional period of five years.

The termination regime has also undergone some amendments. The termination of the lease agreement for demolition or carrying out renovation or restoration is possible only in cases that

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involve work subject to prior permission from a municipality. Therefore, conservation work no longer constitutes grounds for the termination of a lease agreement.

If the agreement is terminated by the landlord in order to demolish the leased premises, the tenant will be entitled to reimbursement, unless the landlord provides evidence that the degradation of the property is not his or her responsibility. Consequently, the burden of proof regarding a landlord's maintenance of a property does not lie with the tenant.

### Conditional rent

This act intends to replace the conditional rent regime and – according to Law 80/2014's explanatory memorandum – aims to encourage new public policies for financing the restoration of old buildings for lease. Conditional rent applies to entities that have received public funding for housing construction or have acquired houses from the state or other public entities. This regime sets a maximum amount of rent for lease agreements. However, Law 80/2014 provides that the initial monthly rent is negotiated by the parties, but it cannot exceed one-twelfth of the result of applying the conditional rent rate to the taxable value of the leased premises in the year into which the agreement was entered.

### Supported housing lease

Law 81/2014 fills the gap left by the lack of a statutory regime for regulating lease agreements for social purposes. The regime applies to houses held by any title by public entities that are leased to people who have no other way to ensure the effective exercise of the right of access to decent housing suitable to their needs.

Therefore, besides the regulation of housing assignment procedures, which hereinafter take place through three types of contest (rating, lot and registration), this decree foresees solutions intended to respond to specific housing needs (eg, single-parent families, families with minors, disabled people, people aged 65 and over and victims of domestic violence).

The social housing lease agreements are binding for a maximum period of 10 years, which will be taken into account if the parties do not agree to a term for the lease agreement or if they agree on a lease for a longer period. The aim is to improve flexibility regarding leases for social purposes in order to provide social housing to those who are in need of such aid.

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