

AMENDMENTS TO THE LEGAL FRAMEWORK APPLICABLE TO URBAN LEASES

After six years from the enactment of the New Urban Lease Regime (“NRAU”), approved by Law no. 6/2006, 27 February (which entered into force on 28 June 2006), a new reform of the urban lease regime came into existence with Law no. 31/2012, 14 August, which enters into force 90 days after its publication, i.e., on 12 November 2012.

Regarding the term of housing leases, a minimum term ceases to exist and, where the parties are silent, the agreements shall be considered as having been entered into with a fixed term, for a two-year period. In the absence of any stipulation regarding the term of the agreement in non-housing leases, it is presumed that such agreements have been entered into for a fixed term of five years, the Lessee not being entitled to terminate an agreement without prior notice of at least one year.

Distinct terms have been introduced for the communications necessary in order to allow the Lessor to oppose the automatic renewal of the agreement; notably the communication served to Lessee shall be made with a prior notice of at least:

- i) 240 days, if the initial term of the agreement or of the renewal thereof is six years or more;
- ii) 120 days, if the initial term of the agreement or of the renewal thereof is one year or more but less than six years;
- iii) 60 days, if the initial term of the agreement or of the renewal thereof is six months or more but less than one year;
- iv) 1/3 of the initial term of the agreement or of the renewal thereof, in case the term is less than six months.

It is now legally foreseen that, in the event that the Lessor opposes the renewal of the agreement, the Lessee shall have the possibility to terminate said agreement at any time by serving prior notice not less than thirty days before the intended date of the termination of the agreement.

The Lessee may impede the automatic renewal of a fixed term agreement by serving the Lessor with a prior notice of at least:

- i) 120 days, if the initial term of the agreement or of the renewal thereof is six years or more;
- ii) 90 days if the initial term of the agreement or of the renewal thereof is one year or more but less than six years;
- iii) 60 days, if the initial term of the agreement or of the renewal thereof is six months or more but less than one year;



REAL ESTATE

Non-housing leases, it is presumed that such agreements have been entered into for a fixed term of five years, the Lessee not being entitled to terminate an agreement without prior notice of at least one year

- iv) 1/3 of the initial term of the agreement or of the renewal thereof, in case the term is for less than six months.

Regarding early termination, after 1/3 of the initial term of the agreement or the renewal thereof, the Lessee may terminate the agreement at any time by serving the Lessor with prior notice of at least:

- i) 120 days counted from the desired term of the agreement, if such term is one year or more; or
- ii) 60 days in all other situations.

In what relates to lease agreements of an indefinite term, after six months from the date in which the agreement enters into force, the Lessee may early terminate the agreement at any time. The aforementioned regime shall apply *mutatis mutandis*.

The regime of unrestricted termination by the Lessor is established in indefinite term agreements upon a minimum two year notice to the Lessee prior to the date in which the Lessor intends to terminate. This shall apply both to housing leases entered into whilst the Urban Lease Regime ("ULR" or in Portuguese, *Regime de Arrendamento Urbano*) was in force as well as to non-housing leases entered into after Decree-Law no. 257/95, 30 September, unless the Lessee is 65 years old or older or is disabled to a proven degree greater than 60%.

Whenever the Lessor early terminates the agreement under such terms, the Lessee may early terminate it upon notice to the Lessor of not less than thirty days prior to the desired term.

The early termination by the Lessor of an indefinite term lease agreement for the purposes of demolition or remodeling or restoration works shall go into effect by giving notice to the Lessee not less than six months before the intended eviction date and stating the basis for early termination (under penalty of ineffectiveness) as follows:

- a) Evidence that a procedure for the prior control of the urban operation to be carried out on leased property was initiated, as well as evidence of the technical status of the agent who declares that such urban operation requires vacating the leased property in the case of an operation subject to prior control;
- b) Description of the operation to be carried out on the leased property, indicating that it is not subject to prior control and the reasons as to why said operation requires the eviction of the lessee from the leased property.

In the situation under scrutiny, the Lessor is obliged to either: a) pay compensation equal to one year's rent, or b) ensure the resettlement of the Lessee in the same municipality in similar conditions to those held both in what pertains to the place as well as to the amount to be paid for rent and expenses.

In lease agreements entered into as indefinite term agreements, the early termination procedure by way of communication to the Lessee with not less than six months prior to the intended date for the eviction and by stating the grounds for the early termination (under penalty of ineffectiveness) is also applicable in the event that the Lessor invokes the need to use the leased property for his own residence or that of his direct descendants and the Lessor is subject to the payment of an amount equivalent to one year's rent and fulfillment of the following requirements:

The regime of unrestricted termination by the Lessor is established in indefinite term agreements upon a minimum two year notice to the Lessee prior to the date in which the Lessor intends to terminate

- a) If the Lessor is the owner, joint owner or usufructuary of the building for more than two years and, regardless of such term, if the Lessor has acquired it through inheritance;
- b) For over a year, the Lessor has not had, in the municipalities of Lisbon or Porto (and suburbs) or in the respective municipalities as for the rest of Portugal, a residence that meets the needs of a primary residence for himself or for his direct descendants.

If the Lessor does not commence the construction works within six months of the eviction or does not occupy the leased property within three months and for a minimum period of two years, the Lessor is obliged to pay compensation equivalent to ten years' rent.

Under the transfer of the lease agreement owing to death of the Lessee, the agreement does not lapse when the Lessee is outlived by:

- a) The Lessee's spouse residing in the leased property;
- b) A person who lived with the Lessee as man and wife (*união de facto*) for more than one year;
- c) A person who lived with the Lessee in joint economy (*economia comum*) for more than one year.

In the latter two cases, paragraphs b) and c), the transfer of the lease agreement requires that, at the date of the Lessee's death, the transferee had resided in the leased property for more than one year.

The right to transfer shall not apply if the transferee owns or leases a residence in the area of the municipalities of Lisbon and Porto and its suburbs or in the respective municipalities as for the rest of Portugal, on the date of the Lessee's death.

Any communication between the Lessor and the Lessee concerning the termination of the lease agreement, rental updates and construction works, should be made in writing and sent by registered letter with notice of receipt, unless otherwise provided for by law.

The letters sent to the Lessee, in the absence of written instructions to the contrary, should be addressed to the leased property, and if it is the family residence, the letters should be addressed to each of the spouses.

The letters sent to the Lessor shall be addressed to the address specified in the agreement or to the address of the Lessor's immediately preceding communication, and in case of inexistence, the letters should be sent to the Lessor's domicile or office.

Any communication shall include the full address of the sender and any change of address shall be notified.

The communication by the Lessor to terminate (*resolução*) the agreement in the event of late payment equal to or of more than two months of rent, charges or expenses, or in the event of a late payment of more than eight days for more than four times in row or four times interpolated in a period of twelve months, or in the event the Lessee opposes the construction works ordered by a public authority, is made through:

- a) Judicial notice (*notificação judicial avulsa*);

The early termination by the Lessor of an indefinite term lease agreement for the purposes of demolition or remodeling or restoration works shall go into effect by giving notice to the Lessee not less than six months before the intended eviction date and stating the basis for early termination

If the Lessor does not commence the construction works within six months of the eviction or does not occupy the leased property within three months and for a minimum period of two years, the Lessor is obliged to pay compensation equivalent to ten years' rent

- b) Contact by lawyer, solicitor or enforcement agent, made personally to the notified party with duplicate delivery of communications and copy of the documents attached thereto, and the notified party shall sign the original; if the addressee refuses to receive or to sign the document, a note of the incident shall be drawn and the communication shall be deemed to have taken place on that day. If it is not possible to find the addressee, the Lessor shall send a registered letter with acknowledgment of receipt to the leased property after 30 to 60 days from the date in which the addressee was not found, and the communication shall be deemed to have been received on the tenth day after being sent;
- c) Written document signed and submitted by the Lessor, under written agreements in which the domicile has been agreed, and in such a scenario, any change in the domicile is ineffective before the Lessor, unless the Lessor has authorized such modification.

If legal rules concerning the formalities of the communications are not met, the communications will be considered null and void.

The communications effected under the aforementioned terms shall be deemed performed even if:

- a) The letter is returned because the addressee has refused to receive it or the letter has not been collected in the term specified by the postal services;
- b) The acknowledgment of receipt has been signed by someone other than the addressee.

However, this regime does not apply to the letters that:

- a) Constitute the Lessor's initiative to make the transition to the NULR and special rent update;
- b) Represents an enforcement title (*título ejecutivo*) for payment of rents, charges or expenses or to serve as a basis for the special eviction procedure.

In such cases, the Lessor shall send another registered letter with acknowledgment of receipt after thirty to sixty days from the date of dispatch of the first letter. If the new letter is once again returned, the communication shall be deemed received on the tenth day after the date of its dispatching.

TRANSITIONAL RULES

In relation to housing agreements entered into whilst the ULR was in force and non-housing agreements entered into after Decree-Law no. 257/95, 30 September, it is set forth that the fixed term agreements are renewed automatically at the end of the term for a term of two years if the parties have not agreed on a longer term.

The agreements without a defined term follow the regime applicable to agreements of indefinite term with the following exceptions:

- a) The limitations on early termination by the Lessor, pursuant to Article 107 of the ULR, paragraph 1, subparagraph a), are maintained;
- b) Payment of an amount equivalent to one year's rent or ten year's rent calculated in accordance with Article 35, paragraph 2, subparagraphs a) and b), in the event, respectively, of termination by the Lessor for housing or for the purpose of demolition or construction works of remodeling or restoration as well in case the Lessor does not commence construction within six months or does not occupy the leased property within three months and for a minimum period of two years;
- c) Impossibility of exercising the early termination regardless of justification, based on prior notice of two years if the Lessee is 65 years old or more or is disabled to a proven degree greater than 60%.

Any communication between the Lessor and the Lessee concerning the termination of the lease agreement, rental updates and construction works, should be made in writing and sent by registered letter with notice of receipt, unless otherwise provided for by law

The aforementioned, with the impossibility of exercising the early termination, regardless of justification, based on a simple notice served two years in advance, shall apply to housing agreements entered into before the entry into force of the ULR and non-housing agreements entered into before the Decree-Law no. 257/95, 30 September.

Regarding non-housing lease agreements, the term for the prior notice is increased to five years whenever, after the entry into force of the NULR, occurs a:

- a) Transfer of property, lease of the property or assignment of the lease to exercise an independent profession;
- b) *Inter vivos* transfer of a holding which determines the change of ownership of share capital by more than 50%.

Concerning the update of rents, a mechanism is created for renegotiating the rent, which may be triggered by the Lessor, indicating the amount of rent, the type and term of the intended agreement, the value of the leased property (under the terms of the Code on the Property Municipal Tax) and copy of the legal description of the property of the tax authorities. The Lessee shall answer within 30 (thirty) days, either accepting the proposal or proposing a new value, type and term for the agreement or terminating earlier the agreement.

Where the parties are silent or agreement is not reached on the type or term of the agreement, the agreement shall be deemed to be entered into with a fixed term for a term of 5 years.

If the Lessee submits a counterproposal, the Lessor shall, within 30 days after receipt, notify the Lessee of the acceptance or refusal of the proposal.

If the Lessee objects to the value of rent proposed by the Lessor and does not present a counterproposal, the maintenance of the value of rent in force as of the date of the notice shall be construed as a proposal. The failure to answer shall be construed as an acceptance. If the Lessor does not accept the rent proposed by the Lessee, the Lessor may early terminate the lease agreement by paying a compensation equivalent to 5 years rent resulting from the average value of the proposals made by the Lessor and by the Lessee, which is aggravated if the agreement is not reached for minor differences (by doubling the compensation or increasing it by 50% if the rent offered by the Lessee is not inferior to that of the Lessor's proposal of more than 10% or 20%, respectively). The Lessee shall vacate the leased property within 7 months and up to a maximum of 13 months in the case of household which includes children or students.

Alternatively, the Lessor may update the rent in accordance with the tax value of the leased property asset, in which case the agreement is deemed entered into with a fixed term of 5 years.

Within the period comprised between the notification for early termination and the date in which the termination becomes effective, the higher between the former rent and the rent proposed by the Lessee shall apply.

If the Lessee early terminates the agreement, it shall vacate the leased property within 3 months and there will not be any rent update.

If the Lessee invokes and proves that he/she is 65 years old or more or is disabled to a proven degree greater than 60%, there may be a rent update by the agreed value or by the

value of the leased property determined according to its market value, unless a state of economic need occurs simultaneously.

The foregoing applies to non-housing leases and a special regime applies for micro entities. The agreement will only be subject to the NULR by way of an agreement

Concerning the update of rents, a mechanism is created for renegotiating the rent, which may be triggered by the Lessor, indicating the amount of rent, the type and term of the intended agreement, the value of the leased property and copy of the legal description of the property of the tax authorities

between the parties or, in its absence, within five years of receipt by the Lessor of the Lessee' a answer, and during this period the rents may only be updated by reference to the value of leased property.

The transitional regime of transfer of lease agreements owing to death, in force previous to this new law, provides that the lease shall not lapse whenever the Lessee is outlived by:

- a) The Lessee's spouse residing in the leased property;
- b) A person who lived with the Lessee as man and wife (*união de facto*) for more than one year;
- c) A direct descendant living with the Lessee for over a year;
- d) Son or stepchild under one year of age or living with the Lessee for over a year and is a minor, or having age less than 26 years, attending the 11th year or the 12th year of school or attending an establishment of intermediate or higher education;
- e) Son or stepson living with the Lessee for over a year, carrier of a disability to a proven degree greater than 60%.

The right to transfer the leased property does not apply if, on the date of the Lessee's death, the holder owns or leases residence in the municipalities of Lisbon or Porto (and suburbs) or in the respective municipalities as for the rest of Portugal.

Whenever the transfer occurs to a descendant living with the Lessee and such person is less than sixty-five years of age, the agreement shall be deemed entered into for a fixed term of two years, unless otherwise agreed between the parties. In case of transfer of the right to lease to a minor living with the primitive Lessee, the same regime will apply when the minor reaches eighteen years or, if he/she is still studying, twenty six years.

Contact
Filipa Arantes Pedroso | fpedroso@mlgts.pt



MEMBER OF
MLGTS LEGAL CIRCLE
INTERNATIONALITIES WITH THE PORTUGUESE-SPEAKING WORLD

To address the growing needs of our clients throughout the world, particularly in Portuguese-speaking countries, MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA has established solid associations and alliances with leading law firms in Angola, Brazil, Mozambique and Macau (MLGTS Legal Circle).

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA

ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

São Paulo, Brazil (in association)
Mattos Filho, Veiga Filho, Marrey Jr.
& Quiroga Advogados

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

Luanda, Angola (in association)
ALC – Angola Legal Circle Advogados

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

Maputo, Mozambique (in association)
SCAN – Advogados & Consultores

Macau, Macau (in association)
MdME | Lawyers | Private Notary

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

www.mlgts.pt