

AMENDMENTS TO THE REGIME OF HOUSING CREDIT AND SEIZURE OF REAL ESTATE

1. HOUSING CREDIT

On November 9, 2012, in the Official Gazette (*Diário da República*) the amendments to the regime of housing credit were published; they were introduced by Laws no. 57/2012, no. 58/2012 and no. 59/2012, all 9 November and each one of them regulating a different aspect of such regime.

1.1 Law no. 57/2012

This law will enter into force on January 1, 2013. It introduces the second amendment to Decree-Law no. 158/2002 of 2 July, which regulates saving plans, allowing the reimbursement of the values of such plans for payment of installments of housing credit.

The novelty of Law no. 57/2012 is that it provides the possibility of participants to request the values of retirement /education saving plans (PPR/E) and/or “*payment of installments of credit to acquisition of owner-occupied and permanent housing*”.

1.2 Law no. 58/2012

This law creates an exceptional system of protection for housing credit debtors who are in a very difficult economic situation. This new regime entered into force on November 10, 2012.

The indicated regime is applicable to situations of breach of loan agreements concluded in the context of the system of granting housing credits, provided that the following cumulative conditions are fulfilled (art. 4): (i) the housing credit is secured by a mortgage which covers real estate which is the only owner-occupied and permanent housing of the borrower’s household and in relation to which the credit was granted, (ii) the household is in a very difficult economic situation, (iii) the tax value of the real estate does not exceed € 90 000, € 105 000 or € 120 000, depending on the location coefficient of the mortgaged real estate, (iv) the housing credit is not secured by other real guarantees (*garantias reais*) or personal guarantees (*garantias pessoais*), unless in the latter case, the guarantors are also in a very difficult economic situation.

The law defines a very difficult economic situation as the unemployment of one of the members of the household and by other income and asset indicators of the respective household.



LITIGATION
AND
ARBITRATION

The novelty of Law no. 57/2012 is that it provides the possibility of participants to request the values of retirement /education saving plans (PPR/E) and/or “payment of installments of credit to acquisition of owner-occupied and permanent housing”

The access to the regime of protection of debtors of housing credit shall be initiated with a request submitted by the borrower to the credit institution with which he has negotiated the loan agreement in the context of the system of granting housing credits and with the submission of documents proving that he is in a very difficult economic situation.

It shall be emphasized that the request for access to the regime must be accepted or rejected by the credit institution within 15 days. In case access to this regime is accepted, the credit institution shall present to the borrower a proposal to restructure the plan which includes several measures. It shall also communicate such acceptance to the court where the enforcement proceeding is pending, which automatically suspends the mortgage enforcement proceeding regarding the debts resulting from the housing credit.

1.3 Law no. 59/2012

This law creates safeguards for the borrowers of housing credit and amends the Decree-Law no. 349/98 of 11 November, which regulates the concession of housing credit, construction, upgrading, extension of owner-occupied, secondary or lease housing. The additions and respective amendments enter into force on December 9, 2012.

The law amends article 22 of Decree-Law no. 349/98, 11 November, regarding the assessment and decision regarding requests, adding number 5 which establishes that “*the approval of the loans and determination of the respective conditions shall take into account the risk profile of the credit operation*”.

It further adds six numbers to such Decree-Law, creating safeguards to the borrowers of housing credit, as follows:

- i) The borrower may designate the installments corresponding to the housing credit for compliance purposes.
- ii) The rescission or any other form of termination of the housing loan agreement by credit institutions on the basis of a breach, provided that there are three installments overdue and unpaid by the borrower, is now possible.
- iii) The law creates a special regime of loan guarantees by agreement between the lending credit institution and the borrower and the resumption of the housing credit by the borrower, provided that the overdue and unpaid installments are paid, as well as the interest and the expenses the credit institution have incurred. It forbids the lending credit institutions to increase the charges and costs connected with the credit in case of a renegotiation motivated by any of the situations established in such article.
- iv) The law creates a housing unit evaluation regime to be undertaken by the lending credit institution.

2. HOUSING CREDIT

Law no. 60/2012 of 9 November amends the Civil Procedure Code, modifying the rules regarding the seizure implementation order and the determination of the base value of real state under enforcement proceedings. The amendments entered into force on November 10, 2012.

The real estate and commercial property seizure regime is now more strict. The seizure of real state which is the debtor's owner-occupied and permanent housing may only be initiated when the seizure of other goods does not satisfy the amount owed to the creditor within twelve months (for amounts up to € 2.500) or eighteen months (for amounts greater than € 2.500). Such period is reduced to six months in case of seizure of other real estate and commercial property.

Currently the base value of real estate corresponds to the tax value in terms of the evaluation undertaken less than six years ago or the market value, whichever is higher.

Finally, the value in the context of an executive sale is now equal to 85% of the base value of the goods instead of the 70% which used to be in force.

Contact
Helena Soares de Moura | hsmoura@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

www.mlgts.pt

LISBON

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

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

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 1º
Sala 113 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

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

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

Luanda, Angola (in association)
Angola Legal Circle Advogados

Maputo, Mozambique (in association)
Mozambique Legal Circle Advogados

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