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# RECENT AMENDMENTS TO THE PORTUGUESE LEASE LAW – A STEP BACK?

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## I. FOREWORD

Material amendments to the urban lease regulations contained in the New Urban Lease Regime (NRAU), in the Portuguese Civil Code and in the Legal Regime of Works in Leased Properties (RJOPA) have been recently introduced by Law 12/2019 and by Law 13/2019, both dated of 12 February (the "Law"), and entered into force on 13 February 2019.

These amendments resulted from the controversial social and politic situation caused by the massive increase of rents and termination by landlords of existing (old) residential leases as permitted under the urban lease regime then in force and from the social consequences arising therefrom.

In fact, the Law was approved by the left-wing coalition political parties supporting the socialist government and aimed, ultimately, to enhance the legal protection of the tenant's position in existing residential leases.

The amendment now introduced, together with the previous amendment enacted by Law 30/2018, dated of 16 June 2018 that detailed / extended tenancy legal pre-emption rights over the sale of residential properties, is a result of a large public political discussion that took place simultaneously with to the sale by the largest Portuguese insurance company (Fidelidade) of a massive real estate portfolio to one institutional investor, where both the early termination of residential leases and the pre-emption rights over the sale of the underlying properties have been flagged by the left wing political parties as key social impacting matters requiring urgent revision by the Portuguese Parliament. In light of this environment, both these amendments are now usually labelled as the "Fidelidade Lease Law".



## II. SOME HIGHLIGHTS

We would highlight the following main amendments introduced by the Law to the urban lease regime in force:

- a) Residential leases with fixed term: (i) a minimum term of one year has now been established by Law (except in case of lease agreements for non-permanent housing or for a temporary special purposes, v.g. for professional, educational and training or tourism purposes); (ii) in case of automatic renewal of the lease, the Law now determines a minimum renewal period of three years; (iii) if the lessor decides to exercise its right of opposition to the renewal, such opposition will be only effective three years after the execution of the lease agreement (except in case the lessor requires the leased property for its own residence or for the residence of his first degree descendants). In other words, the opposition to the renewal by the lessor is only effective after a 3-years period has elapsed since the date of the execution of the lease (the tenant now benefits from a 3-years protection term during which the lessor cannot oppose to the renewal of the lease).
- b) Non-residential leases with fixed term: (i) a minimum renewal period of five years has now been established by the Law; (ii) the opposition to renewal by the landlord will only be effective five years after the execution of the lease agreement (except in case of lease agreements for a temporary special purpose). In other words, the opposition to the renewal by the lessor is only effective after a 5-years period has elapsed since the date of the execution of the lease (the tenant now benefits from a 5-years minimum term during which the lessor cannot oppose to the renewal of the lease).

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c) Residential leases without a fixed term: the lessor may only early terminate the lease agreement by means of a 5-years prior written notice (previously the law required a 2-year prior notice). The termination will only become effective if the lessor confirms the termination notice upon giving another 12 to 15 months prior written notice to the lessee within counted from the date of the termination notice.

d) Termination of non-residential leases: termination by the lessor is only valid in case (i) of demolition, renovation, or major restoration works that require the vacancy of the leased premises provided that after the works no similar premises subsist in the relevant building allowing the lease to be kept in force, or (iii) by means of 5-years prior notice to the lessee instead of the previously required 2-year prior notice.

The lessor is required to compensate, separately, both the lessee and the employees of the lessee establishment existing in the leased premises except if the lease was assigned to any third party under any business assignment (trespasse) during the previous 3-years period.

e) Penalty for late payment of rents: the penalty has now been reduced from 50% to 20% of the owed rent amounts.

f) Leases with surety (fiança): the lessor can only claim payment from the personal guarantor in case the lessee defaults on the payment obligation and the personal guarantor is notified within 90-days counted from the default of the lessee.

g) Alternative means of proof of lease agreements: in case of lack of written form of the lease agreement not caused by the lessee, the latter can from now on prove its existence by any form admitted by law provided that (i) the use of the leased property by the lessee has no opposition of the lessor, and (ii) the rent is monthly paid by the lessee during a minimum period of 6-months. This provision applies to the leases existing at the date of entry into force of the Law.

h) Transition to the NRAU:

i. Residential leases signed before the entry into force of the Urban Lease Regime (RAU), i.e., before 14 November 1990, where the lessee has lived for more than 15 years in the leased premises and, at the time of the transition of the agreement to the NRAU (i) is 65 years or older, (ii) or has a disability with a degree of incapacity equal or in excess of 60%: the lessor may only oppose to the renewal of the lease agreement on the ground of demolition or renovation or major restoration works that require the vacancy of the leased premises.

ii. Residential leases without a fixed term signed under RAU, where the lessee, on 13 February 2019 (i) has lived for at least 20 years, and (ii) is 65 years or older or has a disability with a degree of incapacity equal to or in excess of 60%: the lessor may only oppose to the renewal or terminate the lease agreement on the grounds of demolition, or

renovations works or major restoration works that require the vacancy of the leased premises.

i) Legal Regime of Works in Leased Properties (RJOPA): the scope of this legal regime now encompasses the possibility of suspension of the effects of the lease agreement for the execution of renovation or major restoration works, which now corresponds to the general rule.

For a construction work to qualify as a renovation or major restoration work, its cost, including VAT, must correspond to at least 25% of the value of the leased premises, determined pursuant to the following criteria: its location and gross construction area, average value of sales per square meter of private households, per municipality, disclosed by the Portuguese National Statistics Institute (while previously this minimum amount corresponded to 25% of the property tax value).

The lessor may only terminate the lease agreement in case of demolition, renovation or major restoration works, if after the works no similar premises subsist in the relevant building allowing the lease to be kept in force.

In the absence of an agreement between parties, the termination of a lease agreement without a fixed term for the execution of renovation or major restoration works requires the relocation of the lessee for a period of at least three years, except if (i) the lessee does not accept the relocation offer or, (ii) in case of a non-residential lease, if the relocation is not possible in such case, the lessor must pay a compensation to the lessee to two years rent, but not less than the double of the amount of 1/15 of the property tax value.

The termination of the lease agreement with a lessee that is 65 years or older or who has a certified disability with a degree of incapacity equivalent or in excess of 60%, the temporary relocation of the tenant requires a new lease agreement without fixed term where the landlord does not have the ability to terminate the lease.

### III. CONCLUSION

The changes now introduced are understood by the real estate investors as an effective *"step back"* in the Portuguese leasing market insofar as they represent the introduction of several (additional) mandatory protective measures for the tenants with the consequent impact in the existing freedom to contract.

Moreover, due to its unclear (and sometimes contradictory) language the Law now enacted raise several interpretation doubts in respect of its scope and impact, with the consequent uncertainty arising therefrom.

In light of the above, from now on new lease agreements should be negotiated and modelled by the operators according with the above limitations so as to avoid interpretation doubts and, where applicable, the new protection measures and constraints foreseen in the Law. ■