

NEW PORTUGUESE LEASE LAW - PBBR

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On August 14th, 2012, Law nr. 31/2012 was published, amending the legal lease regime on urban leases. This law will come in to force in November 2012.

The reform in the new law concerning leases is a measure by the Government within the scope of the Portugal's MOU with the Troika, in the context of the agreed financial assistance programme agreed.

The objectives are clear: to motivate the market for urban leases; to allow such market to provide Portuguese people with a housing solution (as an alternative to acquisition), which will allow a reduction of the families' indebtedness; to stimulate families' savings; to promote the mobility of people in their search for jobs; and, to promote urban rehabilitation.

The more relevant changes of the core regime concern three aspects of the contracts for habitation purposes: the freedom to negotiate the terms of duration of such contracts; the reinforcement of mechanisms when rents are unpaid, allowing the termination of the agreements and the recovery of the premises in an easier way; and, flexibility in the termination of contracts executed with an unfixed term when the lessor wants to perform demolitions or structural works, with the need of a mere communication (thus also aiming at the goal of rehabilitation of buildings).

One of the main measures is the change in rent increases. In 2006, the law also changed with the aim of establishing a rent increase regime. However, it was concluded that the 2006 regime was too complex and inefficient. The new regime promotes the communication between the parties to try and reach an agreement regarding the new amount of the rent and also regarding the application of this regime.

The referred regime of negotiation foresees protection mechanisms. In habitation leases such mechanisms protect lessees with economical problems and/or 65 years of age or more, or with a deficiency with a degree of 60 per cent or more of incapacity. For leases for purposes other than habitation, a special regime for micro entities and for non-profitable associations is foreseen.

For the above special cases, there is a transitional period during which the rent may only be updated with reference to the value of the leased premises.

Irrespective of this, a true lease market will only exist if the owners of the properties/investors consider it as a true and safe market, and the new law aims to reinforce the mechanisms that guarantee the means to react in situations of contractual breach.

In fact, the excessive amount of time that judicial decisions actually require, especially in the eviction of lessees in situations of breach, forced many lessors to opt not to put their houses on the market, or to do so at a very high price in order to reduce the risks.

In order to remove these obstacles to lease activity, the new law creates a special eviction mechanism that will be ensured by the Lease National Office and function in the General Justice Administration Board.

We thus conclude that the measures referred above aim at solving two historic problems in the Portuguese lease market: the unrealistic value of the rents in the older lease contracts and the excessive length of time in the termination and recovery of the lease premises.

Should the proposed measures work in a quick and efficient way, we consider that the law in analysis may in fact contribute to the promotion of investment in the lease market and be a solution for many citizens who are facing severe difficulty in accessing credit and consequently in the acquisition of a house.

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