

SEPTEMBER 1ST, 2020

COVID 19 EXCEPTIONAL REGIME FOR THE EVENTS OF DEFAULT IN THE PAYMENT OF RENT

On the past 20th of August, the Law n.º 45/2020 was published. This law introduces a second alteration to Law n.º 4-C/2020 which established an exceptional regime for the situations of default in the payment of rent due under the terms of the contracts for urban housing and non-housing leases, under the scope of the pandemic of COVID-19.

Once again, the changes are only related with the non-housing leases and other forms of property use for commercial purposes – with the exception of the establishments inserted in commercial projects which benefit from the regime foreseen in article 168.º-A, n.º 5, of the Law n.º 2/2020, of the 31st of March, as amended by the Law n.º 27-A/2020, of the 24th of July.

The deadline for the deferral of the rents due has been extended:

- a) In the months in which the state of emergency is in force;
- b) In the months in which, under a legal provision or administrative measure approved under the scope of the COVID-19 pandemic, is determined the closing of the establishments which are open to the public and are destined for retail trade activities and provision of services and the catering establishments or similar, or the suspension of the respective activity;
- c) In the three months following the one in which occurs the lifting of the imposition of closing of establishments or the suspension of the respective activity.

In these cases:

- a) The deferral may not, in any case, be applied to rents which are due after the 31st of December of 2020;
- b) The period for the regularization of the debt shall begin on the 1st of January of 2021 and shall be extended until the 31st of December of 2022;
- c) The payment is made in 24 successive installments, of a value corresponding to the assessment of the total amount due divided by 24, paid together with the rent of the

respective month or until the eighth day of calendar of each month, in the case of a non-monthly rent.

Applicable to the rents which are due from the 1st of July of 2020 until the 31st of December of 2020, the tenants who intend to benefit from the above foreseen regime shall state their intention to the landlord, in writing and up to five days (or twenty, for the rents which are due during the month of July of 2020) before the due date of the first rent in which they intend to do so.

In alternative, they may send their landlord a payment agreement proposal for the rents due and falling due, different from the solutions foreseen in the law.

These communications, besides having to be performed by registered letter with acknowledgement of receipt sent to the address of the landlord specified in the lease agreement or in the immediately prior communication, shall contain, under penalty of inefficacy: (i) the deadline of 10 days for an answer, being considered as absence of an answer the breach of this deadline; (ii) the content which the answer may present and (iii) the consequences of the absence of an answer.

The acceptance of the agreement or the respective refusal shall be transmitted by the landlord by registered letter with acknowledgement of receipt to the address of the tenant, in the 10 days after receiving the proposal of the tenant (being that, in the case of absence of an answer from the landlord or transmitted after the above foreseen deadline of 10 days, it is presumed the agreement to the proposal of the tenant).

The landlord may also, within the referred timeframe, return a counterproposal to the tenant, to which the latter must answer also in 10 days.

During the course of the exceptional situation of prevention, containment, mitigation and treatment of the epidemiologic infection by SARS -CoV2 and the disease COVID -19, the landlord may not execute bank guarantees for the default in the payment of non-housing rents.

The landlords whose tenants stop paying their rents in the terms foreseen above may request the granting of a line of credit with reduced costs in order to support the difference between the value of the monthly rent due and the value resulting from the application to the monthly

income or the monthly invoicing of the landlord of a maximum effort rate of 35%.

Finally, the provisions foreseen in this law do not affect the existence of more favorable regimes for the tenant resulting from the law or from an agreement entered or to be entered between the parties.

In the cases of non-housing leases, if there is a previous agreement which establishes conditions less favorable to the tenant, said provision shall cease to have effect upon communication to be sent to the landlord in the terms foreseen above (in this case, the rents already paid shall not be returned, only being taken into account for the calculation of the amount in debt).

Any clauses which waive the rights granted by this law are null and void.

PARES | Advogados is available to provide information on the consequences for leasing from the exceptional and temporary measures adopted to mitigate the effects of Covid 19, in a more concrete and adequate measure to the reality of each client, being able to provide any and all necessary support in the matter of leasing.

Leonor Monteiro
lm@paresadvogados.com

This Newsletter is addressed to clients and lawyers and does not constitute advertising, being prohibited its copy, circulation or other form of reproduction without the express authorization of its authors. The information provided is generic and does not dispense the need to resort to legal advice prior to any decision being taken regarding the matter in question. For further information please contact **Leonor Monteiro**(lm@paresadvogados.com).