

COVID 19 EXCEPTIONAL AND TEMPORARY MEASURES EFFECTS ON LEASE AGREEMENTS

Law no. 1-A/2020, of 19th of March, stipulated, regarding lease (and similar) relationships and related judicial proceedings, some temporary provisions to be taken into consideration.

As a result of the evolution that has taken place over the last few weeks, this law has been successively changed and its scope extended.

Following our Newsletter of March 2020, concerning precisely the effects on lease of exceptional and temporary measures in response to the epidemiological situation, this Newsletter serves as an update to the referred regime, based on the alterations made by Laws no. 4-A/2020, of 06.04.2020, no. 14/2020, of 09.05.2020 and no. 16/2020, of 29.05.2020.

I. EFFECTS

a) Suspension of Deadlines

Concerning the lease relationships and in particular its termination, it was established that the following should be suspended:

1. The effects of the termination of the lease agreements promoted by the landlord;
2. The expiry of the lease agreements, unless the lessee does not oppose to the termination;
3. The revocation of the lease and the opposition to the renewal promoted by the landlord;
4. The term indicated in Article 1053 of the Civil Code¹, if the end of that term occurs during the period in which the said measures are in force.

The aforementioned rules apply, without distinction, to residential and non-residential lease agreements.

What appears to result from the approved provisions is the mere suspension of the effects of

¹ Article 1053 of the Civil Code foresees that in the event of expiration of the lease by (i) verification of the condition to which the parties subordinated the lease; (ii) termination of the right or powers of representation on the basis of which the lease was entered into; (iii) death of the lessee or extinction of the legal person; (iv) loss of the leased property; (v) expropriation for public utility; or (vi) termination of the services that determined the supply of the leased property, the return of the leased property can only be demanded six months after the verification of the fact that determines the expiration.

termination of the agreement and not the preclusion of termination or the right to terminate the lease. The contractual effects (termination of the lease agreement) which, under normal circumstances, would operate during the legally defined suspension period, will be produced (termination of the lease agreement) after the deadline for application of the suspension.

Nothing has been mentioned in relation to contracts with similar regimes to those for the leasing of real estate or with mixed regimes, namely contracts for the yielding of a store in a shopping centre or contracts for the use of space, which is why, although defensible, the applicability of this provisional regime to those situations is not evident.

b) Legal Proceedings

In parallel with the suspension of the effects of the termination of lease agreements, the eviction proceedings, the special eviction proceedings and the proceedings for supply of leased property were expressly suspended, when the lessee, by virtue of the final judicial decision to be pronounced, may be placed in a situation of fragility due to lack of own habitation or for another compelling social reason.

Notwithstanding the benevolence of the solution, the lack of quantification and qualification of the "*situation of fragility due to lack of own habitation*" and of "*another imperious social reason*" may come to pose some interpretative difficulties.

c) Closure of Establishments

The closure of premises and establishments under a legal provision or administrative measure approved in the context of the pandemic caused by COVID-19 disease cannot be used as a ground for rescinding, terminating or any other form of termination of non-residential lease agreements or other forms of real estate exploitation contracts (e.g. contracts for the transfer of a shop in a shopping centre or contracts for the use of space), nor as a ground for the obligation to vacate premises in which they are installed.

The Civil Code provides that the landlord may terminate the lease in the event of non-use of the leased premises for a period of more than one year, which should not occur during this transitional period. Therefore, even though the parties may stipulate different provisions in the lease agreements for non-housing purposes, namely providing for shorter periods, this rule seems to have a special focus concerning the lease agreements for the yielding of a shop in a shopping centre or contracts for the use of space that traditionally have very restrictive resolutive clauses in situations where the lease is not used.

II. DURATION

Regarding the temporal application of the aforementioned transitional rules, the following should be noted:

1. The suspension of contractual effects provided for in a) shall remain in force until 30.09.2020.
2. The legal actions concerning the lease, referred to in b), are suspended under this exceptional and transitional regime in force. As the period of validity of this suspension is not specified, it follows from the regime analysed herein that the suspension will remain in force until the cessation of the exceptional situation of prevention, containment, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and the disease COVID-19. Such cessation should be confirmed with the repeal or amendment of Law no. 1-A/2020.
3. Regarding the provisions in c), their temporal applicability will have to be assessed by reference to the type of premises and establishments, as well as the measures applicable to the types of premises and establishments in question.

For a better framework of all the transitional rules applicable to rental relationships, we advise you to consult our Newsletters of 08.04.2020 and 28.04.2020, regarding the moratorium on rents and the applicable regime, available [here](#).

A **PARES | Advogados** is available to provide information on the consequences of the exceptional and temporary measures adopted to mitigate the effects of Covid-19 on leases in a more concrete and adequate way, suited to the reality of each Client, and is able to offer all necessary support regarding lease matters.

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