

MARCH 2020

**COVID 19**  
**EXCEPTIONAL AND TEMPORARY MEASURES**  
**- EFFECTS ON LEASE AGREEMENTS -**

Following the declaration of the State of Emergency on the 18<sup>th</sup> March, Law no. 1-A/2020 of the 19<sup>th</sup> March (Exceptional and temporary measures in response to the epidemiological situation) and the Decree of the Presidency of the Council of Ministers no. 2-A/2020 of the 20<sup>th</sup> March (Implementation of the declaration of the State of Emergency) were approved, stipulating some temporary provisions to be taken into consideration with regard to tenancy (and similar) relationships as well as to the related judicial proceedings.

**I. EFFECTS**

**a) Suspension of the Deadlines for "Termination"**

It was determined that the deadlines for "termination" of residential and non-residential leases should be suspended in those cases where such "termination" was promoted by the landlord.

"Termination" seems to be understood here in a broad sense and should include, we believe, the effects of opposition to renewal. In fact, given the majority of possibilities for termination of leasing agreements occurs in open-ended leases, an alternative interpretation would be too restrictive.

What appears to follow from the approved provisions is the mere suspension of the termination and not the debarment of the right to terminate the lease. The "termination" that would take effect during the period in which the measures of prevention, containment, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and COVID-19 disease will do so (terminate the lease) after the expiry of these measures.

Nothing is mentioned in regard to contracts with similar regimes to property leases or with mixed regimes, namely contracts for the exploration of a store in a shopping centre or contracts for the use of space. This is why, although defensible, the applicability of this provisional regime to those situations is not evident.

## **b) Suspension of Evictions**

Alongside with the suspension of termination effects, eviction proceedings, special eviction proceedings and proceedings for submission of leased property were expressly suspended when the tenant, by virtue of the final judicial decision to be rendered, could possibly be placed in a situation of fragility due to the lack of own housing.

Although it could be argued that the suspension of these proceedings would already be covered by the suspension of court proceedings in general, it should be noted that the assessment of the "*situation of fragility due to lack of own housing*" could pose some interpretative difficulties.

## **c) Closure of Establishments**

The closure of premises and establishments may not be invoked as grounds for rescission, termination or other extinction of non-residential rental contracts or other forms of real estate contracts (e.g. contracts for the transfer of a store in a shopping centre or contracts for the use of space), nor as grounds for compulsorily vacating the premises in which they are installed.

The Civil Code provides that the landlord may terminate the lease should the leased premises not be used for a period longer 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 establishing shorter periods, this rule seems to have a special focus as regards to the lease agreements for the exploration of a store in a shopping centre or contracts for the use of space that traditionally have very restrictive termination clauses in situations where the lease is not used.

## **II. DURATION**

The new rules provided for in a) and b) above were approved under Law 1-A/2020, which prescribes they will remain in force until the cessation of "*measures to prevent, contain, mitigate and treat the epidemiological infection by SARS-CoV-2 and the disease COVID-19, as determined by the national public health authority*". Since the above-mentioned legislation does not provide for a period of validity, it seems possible to conclude that those measures will remain in force until such time as it is determined otherwise.

As regards to the matter in c), since that provision was approved by Decree 2-A/2020, which implements the declaration of a state of emergency, its effects will only be in force during the period in which the state of emergency is maintained and will automatically expire upon its cessation. Therefore, unless the state of emergency is extended, this measure will be in force at least until the 2<sup>nd</sup> April 2020.

As and when legislative acts amending or supplementing the above are published, we will update this information.

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**PARES | Advogados** is available to provide more detailed information on the consequences on lease agreements of the exceptional and temporary measures adopted to mitigate Covid 19, that will suit the specific needs of each client, being able to offer all necessary support on this matter.

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