

COVID-19 Rent moratorium according to the specific legal framework of Covid-19 (Law no. 4 C/2020, of 6 April)

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I. INTRODUCTION

Due to the Covid-19 pandemic crisis (the “**Crisis**”), a state of emergency was declared in Portugal for an initial term of 15 days, starting on 19 March 2020 and renewed for two additional periods of 15 days, ending on 2 May 2020 (the “**State of Emergency**”). The State Emergency may be renewed for additional time periods, although it is expected that it will no longer be renewed after 2 May 2020.

Several laws and regulations related to the Crisis have been approved during the State of Emergency, including Law no. 4-C/2020 approved on April 2020 (“**Law 4-C/2020**”) which set forth an exceptional regime on lease agreements rent payments.

II. RENT MORATORIUM ACCORDING TO THE SPECIFIC LEGAL FRAMEWORK OF COVID-19

The Law 4-C/2020 is applicable to residential and non-residential lease agreements and (with the necessary adaptations) other forms of real estate use/exploration when referring to commercial establishments that have been closed or activities suspended as an effect of the emergency status measures and shall be applicable to rents due as from 1st April 2020.

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(A) In what respects non-residential lease agreements/other forms of real estate use/exploration, the following provisions shall apply:

- ❖ Tenants may postpone the payment of the rents due in the months in which the State of Emergency is in force plus the first month following its ceasing. The payment of such rents may be made in the 12 months following such period, in 12 instalments, not inferior to 1/12 of each monthly rent, together with the payment of the following rents;
- ❖ Default on payment of the rents due in the months in which the emergency status is in force plus the first month following its ceasing may not be invoked as grounds for termination based on breach of contract, unilateral termination ("denúncia") or other form of termination; in addition, such default cannot be invoked as grounds to evict/vacate the relevant property/leased premises;
- ❖ All penalties due under the agreements and the 20% penalty set out in no. 3 of article 1041.^º of the Portuguese Civil Code (based on the non-compliance with the monthly rent payments) are not applicable during the emergency status;
- ❖ Termination of the agreement by the tenant entitles the landlord to receive all monthly rents due under the agreement, as from the termination date.

(B) In what concerns residential lease agreements, the following provisions shall apply:

- ❖ This law shall only be applicable to tenants and landlords that have a significant decrease of their incomes due to the Crisis; such decrease shall be calculated according with the terms and conditions set forth in Portaria no. 91/2020, of 14 April;
- ❖ In case the above mentioned income decrease is duly evidenced, tenants, students and their respective guarantors, may benefit from financial support (interest-free loan) in order to allow the payment of the monthly rent, granted by *Instituto da Habitação e da Reabilitação Urbana, I. P.* ("IHRU, I. P."), which covers the difference between the monthly rent due and the amount resulting from the application of a maximum effort rate of 35% to the household income, being that the available income of the household cannot fall below the value of the social support index ("IAS");
- ❖ Landlords may also benefit from financial support granted by *IHRU, I. P.* (interest-free loan), in order to compensate the monthly rents in default, in case the decrease of their income is due to non-compliance with the payment of the monthly rent by tenants that did not apply for such financial support and the available income of their remaining household falls below the value of IAS;

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- ❖ In case the tenant is unable to pay the monthly rent and intends to benefit from IHRU, I. P. financial support, a prior written notice up to 5 days in relation to the overdue date of the monthly rent in which the tenant intends to benefit from such financial support, shall be given to the landlord; such prior written notice is not applicable to the monthly rents due on 1 April 2020, in which case the tenant may inform the landlord within a period of 20 days as from 7 April 2020;
- ❖ In the above mentioned situations, default on payment of the rents due in the months in which the emergency status is in force plus the first month following its ceasing may only be invoked as grounds for termination ("resolução") in case the tenant does not pay the rents in default in the 12 months following the above referred period, in 12 instalments, not inferior to 1/12 of each monthly rent, together with payment of the following rents.

This information does not intend to be exhaustive in what concerns all effects, rights and obligations connected with the Crisis with reference to lease agreements; its intention is to cover the main aspects related with **Law no. 4-C/2020, of 6 April**, which granted a rent moratorium applicable to residential and non-residential leases, therefore, all other extraordinary and temporary measures implemented by the Portuguese Government in this regard were not assessed herein. Please note that further measures may be implemented, which means that the information herein provided may have to be updated. The information provided and the opinions expressed herein are of a general nature, not substituting the use of adequate legal advice for the resolution of specific cases.