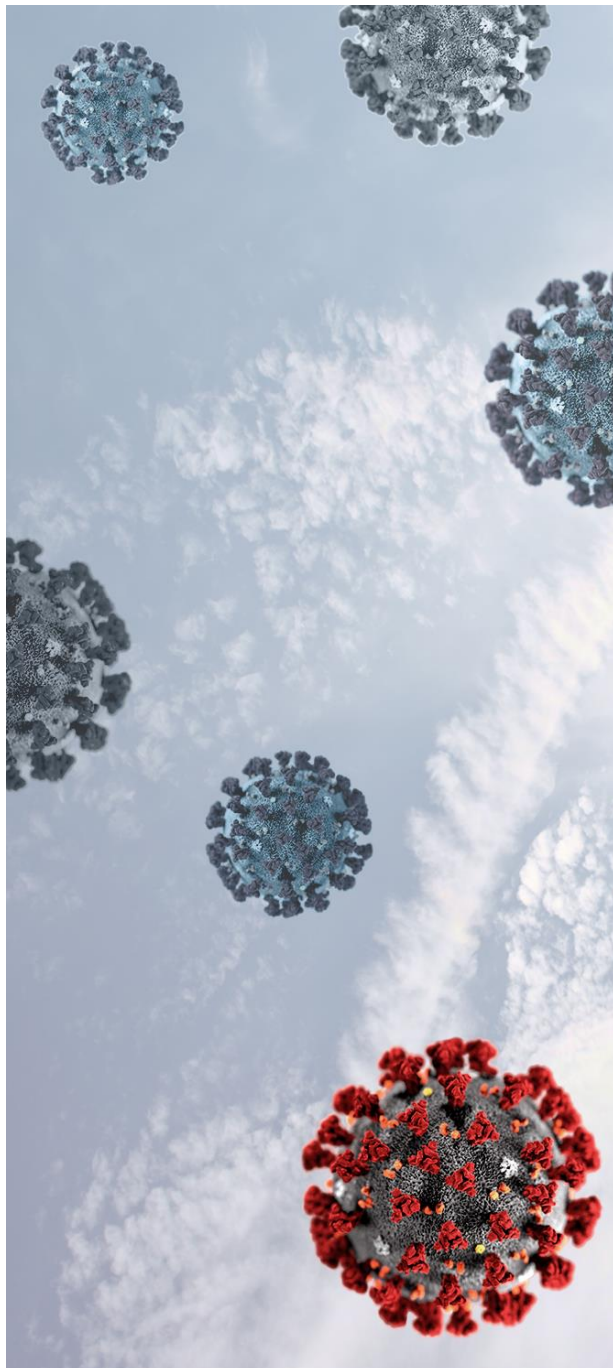


---

# COVID-19: Store rentals in shopping centers during pandemic: balance sheet for first quarter of 2021

Newsletter | Portugal

March 23, 2021



---

## Store rentals in shopping centers during pandemic: balance sheet for first quarter of 2021

- Law interpreting regime of exemption from minimum payment in shopping centers
- Exceptional regime for first quarter of 2021



---

## Store rentals in shopping centers during pandemic: balance sheet for first quarter of 2021

The first general lockdown, between March 18 and May 2, 2020, as well the second general lockdown, in place since January 15, 2021, were accompanied by tight restrictions on economic activity. Most retail trade activities in establishments open to the public were suspended, and only establishments selling essential goods and services remained open.

As with similar establishments, most stores in shopping malls were also closed during the first lockdown period in 2020 (and in some cases beyond this period), and they have been closed since January 15. Even in the so-called reopening phase, establishments were reopened gradually, with restrictions on timings and types of operation. There are even sectors that have not resumed operations since March last year.

These circumstances, which have a major economic and financial effect on activities and establishments, led the Portuguese Government to propose extraordinary and temporary measures to offset the effects felt by store owners in shopping malls.

The first measure, specifically aimed at store owners in shopping malls, was approved as part of the Supplementary State Budget for 2020 (**Law 27-A/2020**, of July 24), by the addition of Section 168-A to the State Budget Act for 2020, which established the exemption from minimum payment due from store owners to shopping centers until December 31, 2020.

This rule led to great controversy among store owners and shopping center owners, as well as interpretation difficulties. In response, this year, Parliament enacted an interpretative law (**Law 4-A/2021**, of February 1) to clarify the period the exemption from minimum payment is applicable, as well as its application scope.

The exemption was only supposed to be in force until December 31, 2020. However, the worsening of the pandemic in the final weeks of 2020 meant that the resulting limitations for the retail sector could be foreseen. Therefore, as part of the 2021 State Budget, Parliament once again approved new extraordinary measures affecting store leases in shopping centers.

Parliament approved **Section 439 of Law 75-B/2020**, of December 31 (State Budget Act for 2021), succeeding Section 168-A of the State Budget Act for 2020.



In both cases, we see provisions that created—and continue to create—interpretation difficulties that have not helped improve the relationship between store owners and shopping center owners.

However, it should be stressed that the solution **Section 439 of Law 75-B/2020** presents was approved pre-lockdown. Therefore, it is doubtful whether it is an adequate response to the current requirements of both store owners and shopping center owners.

We summarize the approved regimes below.

### I – Law interpreting regime of exemption from minimum payment in shopping centers

Under **Section 168-A(5)**, introduced by Law 27-A/2020, store owners in shopping centers are exempt from the obligation of paying the minimum payment until December 31, 2020. The only amount due to shopping center owners is the variable rent component, calculated on store owners' sales. Store owners are still liable to pay all expenses contractually agreed to; i.e., those concerning common expenses and charges.

Several doubts were raised regarding this legal provision, particularly the time it entered into force. Without any legal basis, some argued that it entered into force on the date the state of emergency was declared. Another doubt concerned its application scope since the provision referred to the concept of “shopping center,” which is not legally defined.

To clarify those terms, Parliament approved **Law 4-A/2021**, which is classified as an interpretative law, which is one that aims to establish the correct interpretation of a given legal regulation whose interpretation is disputed, accepting one of its possible interpretations. This law clarifies two aspects:

- i) The exemption from minimum payment established in **Section 168-A(5)**, introduced by Law 27-A/2020, applies to the period between March 13 and December 31, 2020. In other words, instead of coming into force only on the date after Law 27-A/2020 was published in the Official Gazette of the Republic (i.e., from July 25, 2020, under the rules established in that law), this legal provision enters into force on March 13, 2020, with all the resulting consequences.
- ii) **Law 4-A/2021** also clarifies that the expression “shopping centers” must be interpreted to cover all shopping centers, as this concept is defined in Decree Law 10/2015, of January 16.

If Parliament intended to clarify doubts regarding the correct interpretation of the exemption regime from minimum payment when it enacted **Law 4-A/2021**, it does not appear to have been successful. Consequently, many questions have been raised regarding this law. Of



particular importance is what happens to the minimum payments store owners have paid for the period this exemption now covers.

Although this issue is seemingly easy to resolve in light of Law 4-A/2021, this is not the case, because Parliament failed to stipulate how this law interacts with the general rules of the Civil Code on application of law over time, specifically the provisions of Section 13(1) of the Civil Code, which establishes that “*the interpretative law is integrated into the interpreted law, excluding, however, the effects already produced by the obligation’s fulfillment (...).*”

Therefore, it remains to be clarified whether **Law 4-A/2021** i) is an interpretative law potentially subject to the regime established in Section 13 of the Civil Code, or ii) corresponds to a new law that does not fall into that category.

It must also be remembered that the exemption from minimum payment was subject to a request to assess whether the law is constitutional, presented by the Portuguese ombudsperson (*Provedora da Justiça*), which the Constitutional Court still needs to evaluate. If the Constitutional Court declares the regime unconstitutional, that declaration would inevitably affect **Law 4-A/2021**.

### II - Exceptional regime to reduce minimum payment due from store owners in shopping centers for first quarter of 2021

As explained, as part of the 2021 State Budget, Parliament approved an extraordinary legal regime under which the minimum payment due from store owners in shopping centers is, during the first quarter of 2021, to be reduced in proportion to the drop in monthly turnover, calculated in comparison with the same period of 2019. If this is not possible, it must be calculated based on the average turnover of the six months before the President of the Republic’s first declaration of a state of emergency (Decree of the President of the Republic 14-A/2020, of March 18) or a shorter period, if applicable. In all cases, this reduction cannot exceed 50% of the minimum monthly payment.

This regime, which is established in **Section 439** of **Law 75-B/2020**, is considered less favorable to store owners when compared to the previous regime (i.e., the regime of exemption from minimum payment). This is because, in the worst-case scenario, even when there is a drop in total sales, they will still be obliged to pay 50% of the minimum monthly payment, as well as the other charges established in the store lease.

Also, all store owners who opened their establishment to the public after the first declaration of a state of emergency (i.e., after March 18) are excluded from this law. For those cases, Parliament has not set any criteria for determining the drop in invoicing.



The law approved also fails to clarify more practical aspects. For example, Parliament has not established i) the procedure store owners should follow to request this reduction, or ii) the means by which they must prove the drop in invoicing. In any case, it seems clear that the application of this regime depends on the initiative of store owners, who are also responsible for proving the existence of the drop in invoicing.

It can be maintained that the procedure to be adopted to prove a drop in invoicing must closely follow the procedure established in store leases for calculating the variable payment due from store owners (where applicable).

Lastly, if the exceptional situation caused by the pandemic extends beyond the first quarter of 2021, the validity of this regime may be extended to the second quarter of 2021 by a government order.



---

## Contact

Cuatrecasas, Gonçalves Pereira & Associados,  
Sociedade de Advogados, SP, RL  
Sociedade profissional de responsabilidade limitada

### Lisbon

Avenida Fontes Pereira de Melo, 6 | 1050-121 Lisboa, Portugal  
Tel. (351) 21 355 3800 | Fax (351) 21 353 2362  
cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

### Oporto

Avenida da Boavista, 3265 - 5.1 | 4100-137 Porto | Portugal  
Tel. (351) 22 616 6920 | Fax (351) 22 616 6949  
cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

---

Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our Task Force by email [TFcoronavirusPT@cuatrecasas.com](mailto:TFcoronavirusPT@cuatrecasas.com) or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our [website](#).

© Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL 2021.

The total or partial reproduction is forbidden. All rights reserved. This communication is a selection of the news and legislation considered to be relevant on reference topics and it is not intended to be an exhaustive compilation of all the news of the reporting period. The information contained on this page does not constitute legal advice in any field of our professional activity.

### Information about the processing of your personal data

**Data Controller:** Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL (“Cuatrecasas Portugal”).

**Purposes:** management of the use of the website, of the applications and/or of your relationship with Cuatrecasas Portugal, including the sending of information on legislative news and events promoted by Cuatrecasas Portugal.

**Legitimacy:** the legitimate interest of Cuatrecasas Portugal and/or, where applicable, the consent of the data subject.

**Recipients:** third parties to whom Cuatrecasas Portugal is contractually or legally obliged to communicate data, as well as to companies in its group.

**Rights:** access, rectify, erase, oppose, request the portability of your data and/or restrict its processing, as described in the additional information.

For more detailed information on how we process your data, please go to our [data protection policy](#).

If you have any questions about how we process your data, or if you do not wish to continue receiving communications from Cuatrecasas Portugal, please send a message to the following email address [data.protection.officer@cuatrecasas.com](mailto:data.protection.officer@cuatrecasas.com).