
Intellectual Property, Media and IT

Legal Flash | Portugal

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- > **Law 32/2021 – New absolutely prohibited general contractual clause**



I. Law 32/2021 – New absolutely prohibited general contractual clause

On May 27, Law 32/2021 was published, amending Decree-Law 446/85 of October 25, establishing the Legal Regime of General Contractual Terms (the "RJCCG"), and providing for the creation of a system for controlling and preventing unfair contractual terms.

To provide context, when contractual terms are not negotiable and the counterparty must adhere to them (i.e., when the freedom of contract principle enshrined in article 405 of the Civil Code is set aside), the RJCCG privileges the position of the adherent, which the legislator considers to be the weaker party (be it a consumer or a company).

The RJCCG lists clauses that are i) absolutely prohibited, which are null and ineffective in all cases and ii) relatively prohibited, which may or may not be null depending on the commercial practices of the sector or industry in which the transaction takes place.

It should be noted that the RJCCG establishes different prohibitions for i) relations between entrepreneurs or liberal professionals where they act exclusively in these capacities (article 17 et seq.), and ii) relations with final consumers (article 20 et seq.).

Law 32/2021 includes a new general contractual clause that is absolutely prohibited for final consumers, which has been added to the clauses already provided for in article 21 of Decree Law 447/85.

The new prohibition states that any general contract clause that is written "with a font size smaller than 11 or 2.5 millimeters and with a line spacing of less than 1.15" will be considered null and regarded as unwritten.

Law 32/2021 aims to protect consumers from potential abuses and from the use of contracts being presented as forms by including clauses in them that are difficult to see or read due to their size and spacing.

Also, under article 24 of the RJCCG, if a clause is deemed null, under article 12 of the RJCCG, for being considered absolutely forbidden, any interested party may invoke that nullity at any time and the court may also declare it null of its own motion, in accordance with article 286 of the Civil Code.

The new law also foresees that the government should, within 60 days, regulate this law by creating an "administrative system for the control and prevention of unfair terms, guaranteeing that the terms considered prohibited by a court decision are not applied by other entities," concerning all the prohibitions foreseen by the RJCCG.

Law 32/2021 comes into effect on August 25.



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