

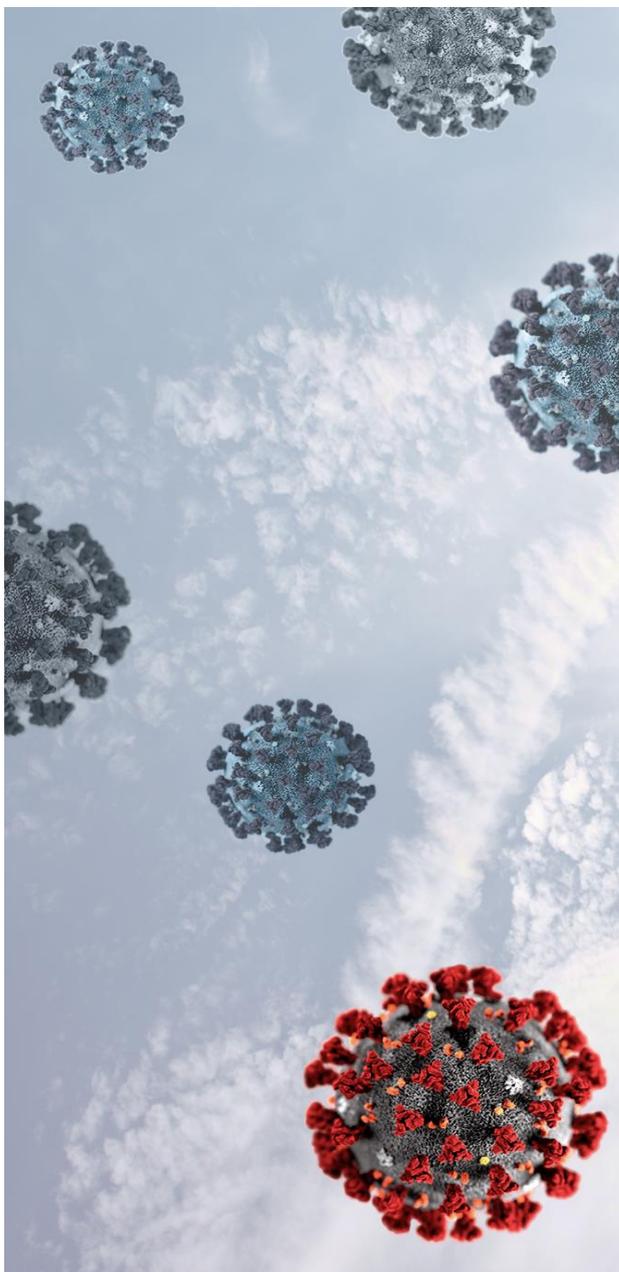
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# COVID-19: New measures in the real estate sector

Newsletter | Portugal

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## New measures in the real estate sector:

- > **Changes to the exceptional and temporary measures regarding leases and similar contracts**
- > **New measures for the tourism industry**



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## Changes to the exceptional and temporary measures regarding leases and similar contracts and new measures for the tourism industry

As a result of the effectiveness of the multiple measures taken to contain the COVID-19 pandemic, the state of emergency was not renewed and ended on May 3.

However, as public health concerns remain, the Portuguese government decided to declare the situation of calamity through **Resolution of the Council of Ministers 33-A/2020 of April 30** (replaced by **Resolution of the Council of Ministers 38/2020 of May 17**, and more recently by **Resolution of the Council of Ministers 40-A/2020 of May 29**).

The situation of calamity is thus the legal figure used by the government to implement its strategy of gradual deconfinement and reopening of economic activity.

Despite this ongoing process, the fact is that, during this phase, significant restrictions on economic activity remain in force, so the Assembly of the Republic changed the extraordinary measures approved for leases to expand their scope and extend the protection for tenants (and other parties to similar contracts) to the post-state of emergency period.

The changes made to the moratorium system (**Law 4-C/2020 of April 6, amended by Law 17/2020 of May 29**), as well as **Law 1-A/2020 of March 19** (in its current text), establish the exceptional system applicable to the termination of leases during this period.

Moreover, given the impact of the pandemic on the tourism industry, the government decided to approve a significant set of measures for this sector. Essentially, the legislation seeks to respond to the problems created by the restrictions on the freedom of movement, specifically the cancellation of bookings by customers.

Below we examine the legislation recently approved.

### I. Moratorium on rent payments

During the health care crisis, **Law 4-C/2020 of April 6** was approved, establishing a moratorium on rent due for residential and commercial leases (as well as other contractual forms of real estate exploitation). This law was recently amended by **Law 17/2020 of May 29**, extending its scope to the period after the state of emergency.



The main amendments made by this law are the following:

➤ **The moratorium extended to cases in which the activity of the establishments remains suspended after the end of the state of emergency**

Until now, the moratorium system included retail and service establishments open to the public, including restaurant and similar establishments, that had been closed or whose activity had been suspended under the decrees implementing the state of emergency (i.e., **Decree 2-A/2020 of March 20, Decree 2-B/2020 of April 2, and Decree 2-C/2020 of April 17**), or other provisions and measures pertaining to the implementation of the state of emergency.

In these cases, the tenants may benefit from a rent deferral for the months in which the state of emergency occurred, plus one month.

*Example:* A commercial tenant whose rent is due on the first day of the month, and whose activity was suspended until the date the state of emergency ended (May 3, 2020), can benefit from the moratorium system for rent due in April, May, and June, and they must start paying the deferred payments with the rent due in July 2020.

However, with the entry into force of **Law 17/2020**, the system includes situations in which the retail and service establishments open to the public have remained closed, or their activity has remained suspended, after the state of emergency, under legal provisions or administrative measures approved for the COVID-19 pandemic (in particular, under the Resolutions of the Council of Ministers declaring the situation of calamity).

This number of establishments that can benefit from the moratorium remains unchanged. This only modifies the suspension or closure period for purposes of this system and establishes an extension for **commercial tenants** to benefit from a deferral of their obligation to pay rent.

In these cases, the relevant time period for the moratorium system does not correspond to the state of emergency plus one month but to the period of suspension or closure of the establishments, plus one month. This period cannot go beyond September 1, 2020.

*Example:* A commercial establishments open to the public in the Lisbon metropolitan area, with a sales floor over 400 m<sup>2</sup>, whose activity remains suspended under section 5.2 of the **Resolution of the Council of Ministers 40-A/2020**, and assuming that this suspension ends on June 4, can benefit from the rent moratorium for April, May, June,



and July. In this case, the tenants must start repaying the deferred amounts in August 2020.

### > **Repayment period**

**Law 17/2020** clarifies that the period for repayment of the rent deferred under the moratorium system must start on September 1, 2020 or, **if earlier**, after the second monthly rent due after the end of the suspension or closure of the commercial or service establishments (as illustrated by the example above).

In any case, the Law clarifies that the repayment period may not go beyond June 2021. This means that, for example, if the suspension of the tenant's activity ends in June 2020, the tenant must repay the deferred amounts within 11 months, starting in August 2020 (i.e., when paying the second monthly rent due after the end of the suspension).

In these cases, the rule for repayment within 12 months is removed, although it fully applies to a situation in which the suspension or closure ended with the state of emergency.

As for the amount of each monthly repayment by the tenant, the Law establishes that this amount must be total amount due prorated by the number of months in which it is to be repaid.

### > **Residential leases and public institution leases**

Unlike with commercial leases, **Law 17/2020** did not extend the period in which the moratorium system may apply to residential leases. In other words, residential tenants can only benefit from the moratorium for the rent due in April, May, and June, provided that they meet the conditions established by Law.

However, the lawmaker extended the financial support to be provided by the Portuguese Institute for Housing and Urban Renovation to residential tenants and landlords by including rents due up to September 1, 2020 in this support.

This extension is also intended for leases in which the landlord is a public entity that will thus be able to give support to the respective tenants (including rent suspension, reduction and exemption) for rent due up to September 1, 2020.

In addition to the changes made by **Law 17/2020, Ordinance 91/2020 of April 14 and Regulation for the Exceptional Support Program for Residential Leasing, of April 14**, which specify the implementation of the moratorium for residential leases, may undergo slight changes in the next few days as a result of the changes to the moratorium system.



## II - Effects on lease termination

**Law 1-A/2020 of March 19** establishes a set of measures affecting early termination, opposition to renewal, revocation, expiration, and other forms of termination of residential and commercial leases, as well as eviction proceedings, to protect the tenants' position. This law was first amended by **Law 4-A/2020 of April 6**, and then by **Laws 14/2020 and 16/2020 of May 9 and 29**, respectively.

Essentially, **Law 14/2020** establishes **that the following will remain suspended until September 30, 2020**:

- The effects of the early termination of residential and commercial leases by landlords;
- The expiration of residential and commercial leases, unless the tenant does not oppose their termination;
- The effects of agreements for the revocation of residential and commercial leases;
- The effects of oppositions to the renewal of residential and commercial leases by landlords;
- The period specified in section 1053 of the Portuguese Civil Code (*Código Civil*) to evict a tenant, if the end of that period falls between the entry into force of Law 1-A/2020 of March 19 and September 30, 2020; and
- The enforcement of a mortgage over a property that is the enforced party's own and permanent residence.

This law establishes that the closure of facilities and establishments due to a legal provision or administrative measure approved in the pandemic **may not be given as grounds for termination of leases** or other contractual forms of real estate exploitation, **nor may it serve as the basis for the obligation to vacate** the leased properties.

Finally, it should be pointed out that **Law 16/2020** establishes that eviction, special eviction, and judicial surrender proceedings may be **suspended** when the tenant, according to a final court ruling, may be placed in a vulnerable position due to the lack of a home or another imperative social reason. This suspension applies to the expiration and prescription periods for these actions. For more information, see our Newsletter COVID-19 End of the suspension of judicial and administrative periods, which you can read [here](#).



### III - Exceptional and temporary measures for the tourism industry

As stated above, **Decree Law 17/2020 of April 23** establishes a set of exceptional and temporary measures for the tourism industry. Specifically, this decree, which came into force on April 24, regulates the impact of the pandemic as regards (i) trips organized by travel and tourist agencies; (ii) cancellation of bookings in tourist developments and local accommodation establishments; and (iii) relations between travel and tourist agencies and tourist entertainment operators on the one side, and tourist developments and local accommodation establishments on the other.

#### ➤ Trips organized by travel and tourist agencies

Trips organized by travel and tourist agencies, scheduled between March 13 and September 30, 2020 that were not made or were canceled for reasons associated to the outbreak of the pandemic, exceptionally and temporarily entitle travelers to opt:

- i. for a voucher for equal value to the payment made, valid until December 31, 2021; or
- ii. for rescheduling the trip by December 31, 2021.

Both the failure to use the voucher and the non-rescheduling by December 31, 2021 entitle travelers to the refund of the amount paid.

In the case of school trips and the like, prohibited under section 11 of **Decree-Law 10-A/2020 of March 13**, travelers may also opt for any of the modalities stipulated in **Decree-Law 17/2020**.

The breach by travel and tourist agencies of the measures described above entitles travelers to activate the respective guarantee fund, under **Decree-Law 17/2018 of March 8**, which establishes the System for Access to and Exercise of Travel and Tourist Agency Activity.

**Decree-Law 17/2020** clarifies that the means available to travelers are established for purposes of sections 25 and 27 of **Decree-Law 17/2018**. Thus, it seems that the rules of this decree, which establish the possibility for a traveler or a travel and tourist agency to terminate the agreement in the case of unavoidable and exceptional circumstances, will not apply to this exceptional context caused by the pandemic, which will be governed, on this point, solely and exclusively by the provisions of **Decree-Law 17/2020**.

Finally, it should be pointed out that the lawmaker established that unemployed travelers may, **until September 30, 2020**, request the refund of the total amount paid when booking their trip.



### > **Cancellation of bookings in tourist developments and local accommodation establishments**

Bookings for accommodation in tourist developments and local accommodation establishments made directly by guests, physically or remotely, for the period between March 13, 2020 and September 30, 2020, which were not honored or were canceled as a result of (i) the declaration of the state of emergency in their country of origin or in Portugal; or (ii) the border lockdown due to the outbreak of the pandemic, entitle guests to opt for:

- i. a voucher for the same value as the payment made, valid until December 31, 2021; or
- ii. rescheduling the booking for the accommodation service by December 31, 2021, by agreement between the guest and the tourist development or the local accommodation establishment.

Again, both the failure to use the voucher or reschedule by December 31, 2021 entitle guests to a refund of the amount paid.

Unemployed guests can also request the refund of the entire amount paid **by September 30, 2020**.

If guests opt to reschedule the booking for a date in which the applicable rate is lower than the value of the initial booking, the difference must be used by the guests in other services in the tourist development or local accommodation establishment, and it will not be refunded if they do not use it.

Finally, these solutions do not apply to refundable bookings, which continue to be governed by the cancellation rules for tourist developments and local accommodation establishments.

### > **Relations between travel and tourist agencies or tourist entertainment operators, and tourist developments and local accommodation establishments**

Decree-Law 17/2020 also establishes that (non-refundable) bookings for accommodation services in a tourist development or local accommodation establishment made by travel and tourist agencies or tourist entertainment operators for the period between March 13, 2020 and September 30, 2020 that are not honored or are canceled as a result of (i) the declaration of the state of emergency in their country of origin or in Portugal; or (ii) the border lockdown due to the outbreak of the pandemic, entitle guests to a credit for the amount not used.



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This credit can be used to pay for any other service booked with the same tourist development or local accommodation establishment on the date specified by the agency or operator, and subject to availability, by December 31, 2021.

If by December 31, 2021, multiple dates requested by the agency or operator are not available, or if these are unable to book the accommodation service by that date, they will be entitled to a refund of the credit.

It should be emphasized that this solution does not apply to refundable bookings.



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## Contact

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

### Lisbon

Praça Marquês de Pombal, 2 (e 1-8º) | 1250-160 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 Oporto | Portugal  
Tel. (351) 22 616 6920 | Fax (351) 22 616 6949  
cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

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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 taskforce 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](#).

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