



Sérvulo & Associados | Sociedade de Advogados, SP, RL



Update

Real Estate, Tourism and Urban
Planning

Package Mais Habitação - Renting: main changes with an impact on investors

Inês de Mundel Calado | imc@servulo.com
Juliana Figueiredo Reis | jfr@servulo.com

Law no. 56/2023, of 6 October 2023 – commonly known as **Package Mais Habitação** – was published 6 October in the Portuguese Official Gazette, after promulgation by the President of the Republic (hereinafter the "Program"). This Update summarizes the main changes brought about by this Program, highlighting the following measures in the area of lease agreements, in order to enhance the offer for residences in Portugal:

New lease agreements for residential purposes: limitation of the initial rent

Until 31 December 2029, the initial rent for **new residential lease agreements** on properties for which lease agreements have been in force for the last five years may not exceed the value of the last rent charged on the same property, by reference to the previous contract, plus a coefficient of 1.02. Thus, **the initial rent for new contracts may not exceed 2% of the previous rent**, conditioning the negotiation of rents. This limitation applies to new contracts that exceed the general rent price limits by type set out in the Affordable Rent Program (Decree-Law no. 68/2019 and Government Ruling no. 176/2019).

However, rent **increases of more than 2% are permissible:**

1. When the immediately preceding lease agreement has not been updated as legally permitted, the annual update **coefficients for the previous three years** can be applied to the initial rent. In this

case, the update coefficient to be considered for 2023 is 1.0543 – in other words, an increase equivalent to 5.43%.

2. When the property has undergone extensive refurbishing or restoration work, duly certified by the City Council, the amount of the costs borne by the landlord may be added to the initial rent of the new lease, **up to an annual limit of 15%**.

However, the update coefficients for these exceptions can only be applied once each calendar year.

Lease agreements prior to 1990: non-transferability to the New Urban Leasing Regime (the "NRAU")

Landlords will definitively lose the possibility of transferring to the NRAU residential lease agreements from before 1990, covered by articles 35 and 36 of the NRAU, according to the new wording offered by the Program, which have not yet been transferred to the NRAU. On the other hand, tax compensation measures will be defined, to be applied from 2024 onwards, including IRS (Income tax) and IMI (Municipal Real Estate Tax) exemptions, as well as defining the amounts and limits of the compensation to be awarded to the landlord and the rent to be set for the tenant.

Forced lease

Article 108-C has been added to the Legal Framework for Urbanisation and Building (the "RJUE"), which establishes the forced lease of vacant residential properties. This regime applies to **(i)** autonomous units for residential use and **(ii)** parts of urban buildings that can be used independently for residential use, **located outside the interior territories** (see [Annex to Government Ruling no. 208/2017](#)) and must also have been classified **as vacant for more than two years**, under the terms of [Decree-Law no. 159/2006](#).

In order to implement this measure, the Program provides for a new **duty of communication** for telecommunications companies and gas, electricity and water distributors. By 1st of October of each year, they must send the municipalities an updated list of either the absence or low consumption supply contracts for each urban building or autonomous unit, including the land registry identification of each related building.

Once two years have passed since the classification as vacant, the municipality sends to the owner of the vacant building:

1. Notification of the **duty to carry out conservation works**. Once the notice has been served and the works have not been carried out, the municipality may order the necessary works to be carried out in the event of non-compliance; or

2. Notification of the **duty to make use** of the property and, if the municipality so wishes, submit a lease proposal, provided that the rent does not exceed by 30% the general rent price limits set out in the Affordable Rent Program (Decree-Law no. 68/2019 of 22 May). If the owner refuses the proposal or does not respond within 90 days and the property remains vacant, the municipality may, exceptionally and supplementarily, proceed with a **forced lease**, whenever it proves necessary "to guarantee the social function of inhabitation".

If the municipality does not intend to proceed with the lease and the property is not in need of conservation work, it **must send the information about the property to IHRU, I.P.**, so that this institute, if it so wishes, can notify the owner under the terms of the duty to give use and proceed with the forced lease, under the same terms as the municipality.

Support for the development of housing for affordable leasing

In addition to the incentives provided for in tax legislation to support leasing, this support takes the form of a **line of financing** and the **assignment of land and public buildings**.

The **financing line** is intended for projects in the area of affordable leasing, such as construction or rehabilitation and the acquisition of properties for subsequent leasing. Leasing to public organisations for subsequent sub-letting is also permitted. The homes built with this funding are subject to the affordable rent regime for a period of twenty-five years and are subject to the parameters and values in force for cost-controlled housing, namely the development cost per square meter.

With regard to the **assignment of public land and buildings**, the government identifies the real estate to be assigned to affordable leasing through the assignment of surface rights, for a maximum period of ninety years, renewable by agreement.

After the lease periods have expired, and in the event of a sale, the municipalities and IHRU I.P. have a preferential right to purchase the buildings (at a price calculated in accordance with the legislation applicable to the promotion of affordable housing).

Lease agreements signed by beneficiaries of this support are subject to the rent price limits set out in the Affordable Rent Program.

The **beneficiaries** of this support are:

1. Residential and construction cooperatives that meet the conditions for access set out in article 4 of Decree-Law no. 145/97;
2. Commercial companies engaged in civil construction, in consortium or in any other form of association with commercial companies whose corporate object includes leasing for residential

purposes and property management, which fulfil the conditions of access laid down in the regulations for granting financing to private civil construction companies for the construction of cost-controlled housing under housing development contracts, or companies in whose capital they participate, as well as entities engaged in property development and investment;

3. IHM-Investimentos Habitacionais da Madeira, EPERAM, and the Regional Housing Division of the Azores, alone or in partnership with the entities referred to in the previous paragraphs;
4. Municipalities and parish councils, alone or in partnership with the aforementioned organisations;
5. Charities, private social solidarity institutions and legal persons of public administrative utility or recognised public interest.

The terms and conditions of the supports will be regulated by an Government Ruling issued by the member of the Government responsible for housing, within ninety days of the law coming into force.

Finally, the support provided for the promotion of affordable leasing will apply, with the necessary adaptations, to **student accommodation**. However, adherence to this scheme is subject to the application of maximum monthly prices for student accommodation, defined in a decree by the members of the government responsible for the areas of higher education and housing.

Tenant and Landlord Desk

The Tenant and Landlord Desk (*Balcão do Arrendatário e do Senhorio* ("BAS")) has been created to exclusively handle the special eviction procedure and the injunction in lease matters, with jurisdiction throughout the national territory, replacing the Lease National Desk (*Balcão Nacional de Arrendamento* ("BNA")) and the Injunction in Lease Matters Service (*Injunção em Matéria de Arrendamento* ("IMA")), now extinct. The BAS aims to simplify and quicken these procedures, reinforcing guarantees in the context of residential leases.

From 1 January 2024, the State will be able, under certain conditions, to pay the landlord rent for residential leases due after the deadline for opposing the procedure, with a total maximum limit of nine times the Minimum Monthly Remuneration. With this payment, the State will be automatically subrogated to the applicant's rights, which can be exercised through tax execution.

Entry into Force of the New Regime

This law came into force on the day following its publication, that is on 7th October 2023.

However, there are exceptions regarding the entry into force of the amendments and additions to the NRAU (except for the amendments to articles 35, 36 and 37), namely with regard to the special eviction procedure, BAS and IMA. These will take effect 120 days after this law comes into force.