



## LITIGATION | CHANGES TO THE PORTUGUESE FINANCIAL LEASING REGIME

Following the Resolution of the Ministers Council no. 172/2007, of the 6<sup>th</sup> November, that approved several measures towards the judicial disentanglement of the courts, it was published the Decree-Law no. 30/2008, of the 25<sup>th</sup> February, that introduced some changes to the Portuguese financial leasing regime provided in Decree-Law no. 149/95, of the 24<sup>th</sup> June (already altered by Decree-Law no. 265/97, of 2<sup>nd</sup> of October, and Decree-Law no. 285/2001, of 3<sup>rd</sup> of November), which will be into force on the 26<sup>th</sup> of March, 2008.

The changes only comprise the wording of three articles and are aimed to promote:

- (i) the disentanglement of the courts;
- (ii) the use of electronic means; and
- (iii) the elimination of the formalities of the lease agreements.

In what concerns the purpose mentioned in (i) above, it is no longer necessary to resort to the judicial courts to cancel the registration of the lease, which is now done within the competent registration authorities based upon the termination of the lease agreement, due to breach of the counterparty, by presentation of the document containing the communication of such termination to the counterparty.

Also, once a preliminary injunction to recover the leased asset is granted by the court, the judge can decide right away the merits of the main proceedings, thus avoiding the duplication of commencing both the preliminary injunction proceedings and the main proceedings, since they have materially the same object.

Regarding the promotion of the use of the electronic means, the law now provides that the presentation of the request to cancel the registration of the lease is done through electronic means and in case of judicial proceedings to recover the lease asset, the party does not have to request or prove the cancellation of the registration of the lease since the court verifies it on its own through the electronic means.

For last, and in what concerns the elimination of the formalities of the lease agreements, the law reiterates that the financial lease agreements can be entered into by private document and if they refer to real estate it is no longer necessary to resort to the official recognition of the signatures of the intervenient parties in their actual presence, as long as the agreements are signed in the presence of a clerk of the registration services when presenting the request to register the lease, along with the certification of the use licence or the constructions licence by the same clerk.

