

Vieira de Almeida & Associados

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Portugal's new law on urban leases

For the last three decades, the Portuguese lease market has been slowing down, mainly due to a legal framework generally aimed at protecting tenants.

The rules preventing a landlord's opposition to the automatic renewal of the term of a lease, or granting tenants the right to terminate the lease at any time, together with a system of rent renewal based on official indexes below inflation were major obstacles to attracting property investors.

At the same time, low bank interest rates contributed to individuals buying instead of leasing their home.

In the 1990's some progress was made with the introduction of a new type of lease which could be terminated by the landlord at the end of its term, subject however, to a minimum five year term.

This did not fully mitigate existing issues, as it did not affect the old leases and kept many of the tenants' protective provisions. However, it did make the market for commercial and office leases more attractive to both private and institutional investors, providing them with a good return on investment.

The Portuguese market still awaited new and modern urban lease laws though, which, following a wide public debate, were finally published on 27 February, 2006 (Law 6/2006 – "the New Lease Law" or "NLL") and will come into force on 28 June, 2006.

The main feature of the NLL, from an investor's perspective, is the reduction of the provisions protecting tenants rights in commercial leases and therefore greater freedom of the parties when agreeing them.

Parties now have greater contractual freedom, depending on

supply and demand and their relative negotiating strengths.

They can now agree to exclude the tenant's right to terminate the lease at any time, and introduce variable rents (e.g. based on tenant's turnover) choosing different criteria for rent increases which are outside official indexes. Parties can also agree more flexible procedures for the termination of leases without the time and risk involved with court proceedings.

This is a very positive contribution to the modernisation of commercial leases, increasing their attractiveness to a wider range of investors.

However, the NLL has not gone as far in reforming housing leases, and is still overprotective to tenants (by keeping their termination right at all times, for example), which does not favour investment in the housing lease market.

In addition, the NLL does not have a material impact on existing leases and, therefore, will not particularly encourage the purchase of properties which have existing leases as investments.

Even though the NLL enables landlords to progressively increase old rents, this is conditional on the property being kept in a satisfactory condition.

While rent updates are generally subject to a transitional period (of between five or ten years) and to annual caps, new obligations to increase the refurbishment and maintenance costs, may discourage investors to consider this market.

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En este artículo Ana Maria Ramos y Leonor Brito de Vieira de Almeida, exponen el impacto que puede tener la nueva ley aprobada por el gobierno portugués en materia de contratos de arrendamiento inmobiliario, tanto en el sector comercial como en el privado. Las mismas, ponen énfasis en el hecho de que la nueva ley no repercutirá sobre los arrendamientos ya existentes lo cual podría perjudicar las inversiones en aquellos inmuebles vinculados a la ley antigua. Por otra parte, en el sector comercial hay elementos liberalizadores que pueden motivar un flujo creciente de inversiones a medio plazo.