

The implementation of the Portuguese new law on urban leases

Ana Maria Ramos, Vieira de Almeida

The Portuguese new lease law on urban leases (Law 6/2006, dated February 27, 2006 – “NLL”), enacted on February 27, 2006, is meant to apply not only to the leases signed after its entry into force but also, with some exceptions, to “old leases”.

The implementation of the NLL has created some challenges to the players in the lease market, mostly in what concerns its applicability to “old leases”.

The main innovation brought by the NLL to new leases is the possibility of parties to commercial leases to tailor their agreement in all matters relating to duration and termination (instead of having to follow a pre-determined type of lease agreement), something the commercial lease market is easily adhering to.

However, in respect of “old leases”, the NLL establishes some transitory provisions affecting the parties’ rights and obligations, which have been giving rise to some strong debate.

The NLL foresees, in particular, the possibility of progressively updating the rents of leases entered into prior to 1990, establishing that the procedure must start with a valuation of the property (i.e. the tax value of the property multiplied by its conservation index, as determined by qualified professionals, and which goes from very bad – 0.5 – to excellent – 1.2).

However, the NLL left some related aspects of rent update to further legislation which was only enacted on August 8, 2006 – Decree Law 156/2006, addressing the determination of the conservation index of properties, and Decree Law 161/2006, establishing the legal regime applicable to the municipal arbitration commissions (which are competent for promoting the determination of the conservation index of the properties and also for settling any issues and disputes arising thereof).

While most of the municipal arbitration commissions are still to be created (thus preventing landlords from

having the conservation index attributed to their properties), property owners are also considering the pros and cons of initiating the rent update procedure. Landlords will only be entitled to update rents if the property is in a fair state of maintenance, which may require investment in renovation, while the new annual rent increases cannot exceed 4% of the value of the property.

The market is also discussing the NLL’s transitory provisions, when providing for the applicability of the NLL to “old leases” and in particular to the question of determining if tenants will now always have the right to terminate their agreements at any time.

In fact, prior to the NLL, real estate investors chose to have automatically renewable leases (which the tenant could only terminate with a prior notice in relation to the end of the term) instead of pre-determined leases (where the tenant had a termination right at all times with a prior notice of 90 days), in order to exclude the risk of having tenants terminating their agreement before the end of its term and thus ensuring a safe return to their investment.

The recognition of such termination right in “old leases” is naturally being sustained by tenants to renegotiate their leases but has been seen by landlords as inconsistent with the new principles of the law in respect of commercial leases and also with the protection of the parties’ legitimate expectations.

Both tenants and landlords will now try to push their arguments forward but, taking into account all the doubts arising from the NLL, and unless the Government accepts the need to legislate to clarify this matter the issue will ultimately be settled by judicial decisions on a case by case basis.

Ana Maria Ramos is a member of the Real Estate, Planning and Environmental team at Vieira de Almeida in Lisbon (contact amr@vda.pt).



Ana Maria Ramos

La implantación del nuevo Decreto-Ley 6/2006 de febrero 27, que actualiza la ley de contratos de arrendamientos urbanos, ha causado unos problemas serios con la aplicación del principio de “viejos arriendos”. Lo fundamental del problema es que las provisiones transitorias que afectan a los derechos y las obligaciones de los interesados no son claras.

Ana Maria Ramos, abogada de Vieira de Almeida, añade que dos decretos-ley adicionales cubren aspectos complementarios para la renovación de los arriendos y el método institucional para determinar el índice de conservación por las nuevas comisiones de arbitraje de los municipios. En el futuro los propietarios pueden elevar los arriendos solamente cuando el inmueble alquilado se encuentre en un buen estado de conservación.