

LAW NO. 4-A/2020, OF 6 APRIL

AMENDMENTS TO LAW NO. 1-A/2020, OF 19 MARCH, AND TO DECREE-LAW NO. 10-A/2020, OF 13 MARCH, ON EXCEPTIONAL AND TEMPORARY MEASURES IN RESPONSE TO THE EPIDEMIOLOGICAL SITUATION FOLLOWING THE EPIDEMIC CAUSED BY THE CORONAVIRUS SARS-COV-2 AND COVID-19 DISEASE

I. FRAMEWORK

- Law no. 4-A/2020, of 6 April, changes Law no. 1-A/2020, of 19 March, and Decree-Law no. 10-A/2020, of 13 March, which establish exceptional and temporary measures in response to the epidemiological situation caused by the Coronavirus SARS-CoV-2 and the COVID-19 disease.
- This law is effective as from 12 March, except for:
 - Article 7 of Law no. 1-A/2020, of 19 March (on judicial procedural acts), which is effective as from 9 March;
 - Rules applicable to urgent proceedings and the provisions of paragraph 12 of article 7 referred above (regarding some procedural acts regarding Portuguese National Institute of Industrial Property's proceedings), which are effective as from 7 April.
- This Law entails, among others, amendments to the regimes set forth regarding the deadlines for the practice of procedural and processual acts and the protection of tenants.

II. PROCEDURAL AND PROCESSUAL ACTS

- The reference made in Law no. 1-A/2020, of 19 March, to the application of the judicial vacation regime is replaced by the reference to the suspension of the deadlines for the performance of procedural and processual acts before judicial courts, administrative and fiscal courts, Constitutional Court, Court of Auditors and other jurisdictions, arbitration courts, Public Prosecution Service, Courts of Peace, alternative dispute resolution entities and tax enforcement agencies is maintained until the exceptional situation of prevention, containment, mitigation and treatment of epidemiological infection by SARS-CoV-2 and COVID-19 disease ceases. However, such suspension does not prevent:
 - Proceedings to continue to be handled and procedural acts to continue to be performed once all the parties consider that they are in a position to perform such acts through IT platforms or appropriate means of remote communication (teleconference, videoconference, among others);
 - The Court to render a final decision in those cases in which the court and other entities do understand that no further action is necessary.
- Urgent proceedings, however, are no longer suspended as formerly provided by Law no. 1-A/2020, of 19 March, meaning that urgent proceedings shall continue without any suspension or interruption of deadlines, acts or measures with the following constraints:
 - Where the attendance of the parties, their representatives or other procedural interveners (witnesses, experts, among others) is required in any hearing or other act, such act shall be carried out by means of distance communication (teleconference, videoconference or equivalent);
 - Where it is not possible to perform such acts by means of distance communication and life, physical integrity, mental health, liberty or immediate subsistence of the interveners is at stake, physical attendance may be allowed provided that this does not involve the presence of more people than provided for under the recommendations of the health authorities and in accordance with the guidelines laid down by the competent supreme councils.
 - Where it is not possible or appropriate to ensure the carrying of the acts in accordance with the paragraphs above, the proceedings shall be suspended in the terms set out for non-urgent proceedings.

Any (i) proceedings aimed at the defence of rights, freedoms and guarantees affected or threatened by any unconstitutional or illegal measures, (ii) urgent acts such as the need to present the arrested defendant to a Judge (iii) acts required to avoid irreparable damage, in particular those relating to minors at risk or to educational tutelary proceedings of an urgent nature and the proceedings and trials of imprisoned defendants, are also considered as urgent.

II. PROCEDURAL AND PROCESSUAL ACTS

- It is specifically stated that any acts to be performed within enforcement proceedings are suspended, including those related to sales, tender of creditors, handover of properties or attachment of assets, except where such suspension causes serious damage to creditor's subsistence or causes him irreparable damage, which is to be determined by a court decision.
- The deadline within which the debtor has the obligation to file for insolvency proceedings, provided for in paragraph 1 of article 18 of the Portuguese Insolvency and Corporate Recovery Code, is suspended.
- The suspension of deadlines for taxpayers to file legal claims before a tax court or before the Tax Authorities was firstly foreseen in Law no. 1-A/2020, of 19 March. Though with a not free from misinterpretations wording, the amendments introduced by Law no. 4-A/2020, of 6 April, clarify that, in respect of deadlines for taxpayers to submit their claims, the suspension only covers the deadlines to file a judicial complaint, an administrative complaint, a hierarchical appeal and similar nature procedures, as well as its subsequent administrative and legal acts.
- Deadlines for acts carried out exclusively by electronic means within the scope of the attributions of the Portuguese National Institute of Industrial Property are not suspended.
- Eviction actions and procedures and proceedings for delivery of leased property are still suspended when the tenant, due to the final judicial decision to be handed down, may be placed in a situation of vulnerability due to losing his own house, being also added, by this law, the situation where the tenant is placed in a situation of vulnerability for any other overriding social reason.
- The provisions of Law no. 1-A/2020, of 19 March, foreseeing the suspension of statute of limitations periods in all types of procedures and processes were not subject to any amendment.

III. EXCEPTIONAL PUBLIC PROCUREMENT REGIME

- Article 7-A is added to the Law no. 1-A/2020, of 19 March, which provides for the following measures:
 - The suspension of procedural deadlines does not apply to the pre-contractual litigation provided for in the Portuguese Code of Procedure in Administrative Courts;
 - The suspension of administrative deadlines does not cover deadlines related to public procurement procedures, namely those contained in the Portuguese Public Contracts Code. Thus, the procedural deadlines under the Portuguese Public Contracts Code that were suspended under Law no. 1-A/2020, of 19 March, should resume counting from 7 April.
- It is added to article 2 of Decree-Law no. 10-A/2020, of 13 March, that:
 - Qualification documents provided for in subparagraphs a) and b) of paragraph 1 of article 81 of the Portuguese Public Contracts Code may be waived, including for the purpose of making payments, without prejudice to the contracting authority being able to request them at any time;
 - The provision of a deposit may be waived, regardless of the contractual price.

IV. PROTECTION OF TENANTS AND HOUSING

- It is clarified that the extraordinary and transitory regime of protection for tenants provided for in Law no. 1-A/2020, of 19 March, and now amended, will be in force until 60 days after the measures for prevention, containment, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and for the COVID-19 disease cease to be in effect.
- In addition to the suspension of the effects of notices for termination of lease agreements for residential and non-residential purposes served by the landlord and the suspension of the enforcement of mortgages over properties that constitute the family home of the debtor, already provided for in Law no. 1-A/2020, of 19 March, the following are also suspended:



IV. PROTECTION OF TENANTS AND HOUSING

- The lapsing of residential and non-residential lease agreements, unless the tenant agrees with the termination;
- The effects of notices for revocation or for opposition to the renewal of residential and non-residential lease agreements served by the landlord;
- The period for demanding the restitution of the leased property in the event of lapsing of the lease agreement in the cases of paragraphs b) and following of article 1051 of the Portuguese Civil Code, provided that the term of that period occurs while the said measures are in force.

Lisbon, 10 April 2020

CS Associados Team