

APRIL 27, 2020

## COVID 19

### EXCEPTIONAL REGIME FOR SITUATIONS OF DEFAULT IN THE PAYMENT OF RENT – DEMONSTRATION OF DROP OF INCOME

On April 14<sup>th</sup>, the Decree-Law n.º 91/2020 (the “**Decree**”) was published, which foresees, in execution of article 3.º, n.º 2 of the Law n.º 4-C/2020 of April 6<sup>th</sup>, on which terms is established the demonstration of drop of income for the application of the exceptional regime for the situations of inability to pay the housing rents due since the 1<sup>st</sup> of April of 2020 and until the month following the end of the duration of the state of emergency.

The **drop of income in more than 20 %** for the purposes foreseen in Law n.º 4-C/2020 of April 6<sup>th</sup> shall be calculated, in accordance with the Decree, in the following manner:

1. In the case of housing tenants, students and guarantors of housing tenants which are students, by the comparison between the sum of the incomes of the members of the household in the month in which occurs the determining cause for the alteration of incomes with the incomes received by the same members of the household in the preceding month;
2. In the case of the landlords, by the comparison between the sum of the incomes of the members of the respective household in the month in which occurs the default in the payment of the rents due by his tenants with the incomes received by the same members of the household in the preceding month;
3. In all situations, in the case of members of the household of whom the majority of their income comes from commercial or professional work from the category B of the CIRS<sup>1</sup>, when the billing from the month preceding the drop of income is not representative, they may opt to perform the demonstration of drop of income in reference to the same period in the previous year, remaining the provisions of the previous numbers for the other members of the household.

The fulfillment of the requisite of the **effort rate of the household superior to 35% of the income** shall be verified in the following conditions:

1. Housing tenant in which the rented property is his permanent residence, when the percentual part of the total of the monthly income of the members of his household, which is destined to the payment of the monthly lease is superior to 35 %;
2. Student with a housing lease for a property situated at more than 50km of distance from the permanent residence of his household, for frequency in an educational establishment,

---

<sup>1</sup> Personal Income Tax Code.

when the percentage portion of the total of the monthly incomes of the members of his household, which is destined for the payment of the monthly lease is above 35%;

3. Guarantor of housing tenant who is a student and does not earn work income, when the percentage portion of the total monthly incomes of the members of the household of the guarantor destined for the payment of the monthly housing lease of the student is above 35 %; or
4. Landlord of housing tenants, when the drop of income of the members of his household derives from the nonpayment of rents by his tenants under the exceptional regime of Law n.º 4-C/2020, of April 6<sup>th</sup>, and the remaining available income of that household drops below the value of the social support index (IAS).

By reference to the abovementioned requirements, the Decree also establishes the meanings of:

1. Household of the tenant, the student, the guarantor or the landlord: The group of persons set forth under the terms of article 13.º, n.ºs 4 and 5 of the CIRS, in its current version, namely:
  - a. Married couples not married under the separate property regime, or non-married legal partners, and the respective dependents;
  - b. Each of the spouses or former spouses, respectively, in the cases of separate property regime or of declaration of nullity, annulment or dissolution of marriage, and the dependents in their charge;
  - c. Single father or mother and the dependents in their charge;
  - d. Single adopter and the dependents in his charge;
  - e. Children, adopted children and stepchildren, non-emancipated minors, as well as minors under guardianship;
  - f. Children, adopted children and stepchildren, of age, as well as those that until adulthood are subject to the guardianship of any of the persons in charge of the household, who are not above 25 years old nor receive an annual income above the minimum monthly wage;
  - g. Children, adopted children, stepchildren and those subject to guardianship, of age, who are incapable of working of earning their livelihoods;
  - h. Legal godchildren.
2. Permanent residence of the tenant and of the student: The residence corresponding to their tax address.

The **incomes which are deemed relevant** for the enforcement of the rules of the Decree and of the Law n.º 4-C/2020 of April 6<sup>th</sup> are the following:

- a. In the case of income from professional work, the respective monthly gross value, evidenced by the corresponding pay slips or by declaration from the employer;

- b. In the case of commercial or professional work under category B of the CIRS, the value before VAT, evidenced by the corresponding pay slips, or, in the cases in which its issuance is not mandatory, by the invoices issued in the legal terms;
- c. In the case of income from pensions, the respective gross monthly value;
- d. In the case of income from property, the value of the rents received;
- e. The monthly value of social benefits received in a regular basis;
- f. The monthly value of housing support received in a regular basis;
- g. The values of other incomes received in a regular or periodic basis.

All the remaining incomes shall be evidenced by documents issued by the paying entities or by other documents which prove the respective receipt (e.g.: certificates from the Tax Authority and from the Social Security) or by a sworn statement by the beneficiary, when it is not possible to obtain such declaration, due to the nature of the activity.

The landlord shall prove the default in the payment of rents in virtue of the exceptional regime of the Law n.º 4-C/2020, of April 6<sup>th</sup>, through the corresponding communication of the tenant.

The communications between tenants and landlord, and, if applicable, the IHRU, I. P., are made preferably by electronic mail.

---

**PARES | Advogados** is available to provide information on the consequences on leasing by the exceptional and temporary measures taken to mitigate the effects of Covid 19, in a more specific manner and adequate to the reality of each client, remaining able to provide all the necessary support in the matter of leases.

---

**Maria Marreiros**

[mm@paresadvogados.com](mailto:mm@paresadvogados.com)

---

This newsletter is addressed to clients and lawyers and does not constitute advertising, being prohibited its copy, circulation or other form of reproduction without the express authorization of its authors. The information provided is generic and does not dispense the need to resort to legal advice prior to any decision being taken regarding the matter in question. For further information please contact **Rui Rompante** ([rr@paresadvogados.com](mailto:rr@paresadvogados.com)), **Leonor Monteiro** ([lm@paresadvogados.com](mailto:lm@paresadvogados.com)) or **Maria Marreiros** ([mm@paresadvogados.com](mailto:mm@paresadvogados.com)).