

OCTOBER 9<sup>TH</sup>, 2023

## SUBJECT

“*MAIS HABITAÇÃO*” (MORE HOUSING)  
***New Short-Term Lease (Alojamento Local) Rules***

## RELEVANT LEGISLATION

Law no. 56/2023, of October 6<sup>th</sup>  
Decree-Law no. 128/2014, of August 29<sup>th</sup>

## CONTEXT

Law no. 56/2023 was published in the Portuguese Republic Gazette on the October 6<sup>th</sup> approving the package of legislative changes known as “*Mais Habitação*” (More Housing) which, in addition to other legislation, amends Decree-Law no. 128/2014 of August 29<sup>th</sup>, which regulates the short-term lease activity (AL).

The changes to the AL regime, which came into force on October 7<sup>th</sup>, aim to strengthen control over this activity and prevent it from overlapping with the housing rental market, as well as reducing the litigation inherent to the operation of AL establishments in autonomous units, by giving greater control to condominiums.

Under the same spirit, additional restrictions are now introduced on the transferability of AL licenses, as well as on new registrations, with the aim of returning properties to the residential rental market.

The most important changes to the AL rules are described below.

## ***SUSPENSION OF NEW LICENSES***

- **The registration of new AL establishments, in the form of flats and lodging establishments, integrated in an autonomous unit of a building, is suspended throughout the national territory, with the exception of:**
  - a) The inland territories identified in the annex to Decree no. 208/2017 of 13 July (which can be consulted at the link: [>>>](#)).
  - b) Properties included in the Revive Nature Fund.
  - c) The Autonomous Regions (Azores and Madeira).
- Mainland municipalities will be called upon to expressly define, in their respective municipal housing bills, the appropriate balance of housing supply and student accommodation in their territory, which could allow the above-mentioned suspension to end, without prejudice to identifying the rules and limits on the use of autonomous residential units for AL.

## ***LICENSES IN FORCE***

- The existing and valid AL registrations, on the date of entry into force of this law, **will be reviewed during the year 2030**, and may be renewed for an additional 5 years, with the express authorization of the City Council.
- Exception: AL establishments that constitute collateral for loan contracts signed until February 16<sup>th</sup>, 2023, which have not yet been fully repaid by December 31<sup>st</sup>, 2029, and whose first reassessment will only take place after the full repayment of such loan.

## **AUTONOMOUS UNITS NEW REGISTRATION RULES**

- Whenever the AL establishment is registered in an autonomous unit of a building under the horizontal property regime that is intended, in the incorporation title, for **residential purposes**, the registration must be preceded by a **decision of the condominium** - taken unanimously.

*Comment: With this rule, the legislator has aligned itself with the conclusions of the Supreme Court of Justice in its uniform ruling of the March 22<sup>th</sup>, 2022 - see our opinion article at the link: >>>.*

- Thus, the **minutes of the condominium owners' meeting** authorizing the installation will now be required to instruct the registration of these AL establishments (as was already the case with *hostels*).
- These new rules **only apply to registrations made after this law comes into force**.

## **PERMANENT RESIDENCY ESTABLISHMENTS**

- In the preliminary communication to request the registration of the AL establishment, it is now required to indicate the **seasonal period**, whenever it is a permanent residency used for this purpose for a period of no more than 120 days.

## **TRANSFERABILITY OF LICENSES**

- The non-transferability of AL licenses now includes any type of establishment and in any part of the territory (previously it was only for the "villa" and "flat" types, in containment areas).
- When the holder is a legal person, the expiry of the license is determined by the transfer of any part of the share capital, regardless of the percentage (previously it was + 50%).
- Transferability in the event of succession remains an exception to license expiry.

## **DURATION OF NEW LICENSES**

- The registration of AL establishments now **lasts for five years** and can only be renewed with the express authorization of the City Council.

## ***CANCELLATION OF LICENSES***

- In buildings in horizontal ownership, the condominium owners' meeting can now **oppose** the exercise of AL activity in a unit, by decision of at least 2/3 (instead of half) of the permillage, **without the need to justify such opposition**.
- **Except** when *i)* the incorporation title expressly provides for the use of the unit for AL purposes or *ii)* there has been an express decision by the condominium meeting authorizing the use of the fraction for that purpose.
- Now all the condominium has to do is inform the Mayor of the City Council of its decision to order the immediate cancellation of the AL registration (previously a decision by the City Council was required to cancel the registration), which will then take effect within 60 days after such decision is sent to the City Council.
- The cancellation of the AL registration by the condominium determines the termination of operation of the **establishment until the condominium meeting decides otherwise** (previously it had a maximum term of 1 year).
- The right to a prior hearing after the cancellation of the AL registration has been excluded, i.e. the cancellation of the registration determines the immediate termination of operation of the establishment.

## ***EXPIRY OF INACTIVE ESTABLISHMENTS***

- Within two months of the date of entry into force of this law, AL registration holders are obliged to **prove**, by submitting a tax return, that they are **maintaining their operating activity**, communicating the effectiveness of the exercise on the RNAL platform - National Registry of Local Accommodation, through the Single Electronic Counter provided for in article 6 of Decree-Law no. 92/2010, of July 26<sup>th</sup>.
- The failure to comply with the provisions of the previous paragraph will result in the cancellation of the respective registrations, by decision of the Mayor of the City Council.
- This obligation does not apply to the operation of AL establishments in permanent residencies, provided that this operation does not exceed 120 days per year.

## ***SUPERVISION***

- The Parish Council is now also responsible for inspection, in conjunction with ASAE and the City Council, while the latter retains sole responsibility for investigating the respective cases and imposing the respective fines and ancillary sanctions.

## ***OPERATING RULES OF ESTABLISHMENTS***

- The condominium owners' meeting may determine, by decision approved by a majority of the votes representing the invested capital, that AL establishments have a permanent emergency telephone number, which must be made available to the other condominium owners.
- The owners of AL establishments installed in autonomous units of a building constituted as horizontal property must display signs in a clearly visible place inside their establishments with the timetables set out in the General Noise Regulation, approved by Decree-Law no. 9/2007, of 17 January.

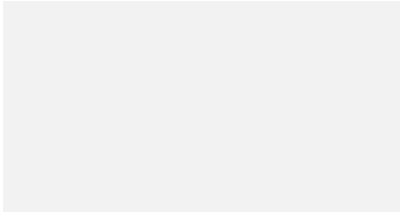
## ***EXTRAORDINARY CONTRIBUTION***

- An **extraordinary contribution** has been introduced on flats and lodging establishments that are part of an autonomous unit of a AL (see our Information Note on the tax aspects of *Mais Habitação*).
- Exempt from this extraordinary contribution are:
  - a) residential properties that do not constitute autonomous units or parts or divisions that can be used independently;
  - b) AL units in permanent residencies, provided that the operation does not exceed 120 days per year.

## ***TRANSFER OF PROPERTIES FROM AL TO LEASE***

- Property income arising from rental contracts for permanent housing is **exempt from IRS and IRC taxation**, provided that the following conditions are cumulatively met:
  - a) The income results from the transfer lease used to operate AL establishments to be rented out for permanent residency;
  - b) The AL establishment was registered and used for this purpose until the December 31<sup>st</sup>, 2022;

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- c) The lease contract is signed and registered on the Tax Authorities Portal by December 31<sup>st</sup>, 2024.
- The exemption applies to property income earned until December 31<sup>st</sup>, 2029.

Over the next few days and weeks, we will be publishing Information Notes on the most important issues in the *Mais Habitação* legislative package.