

ABREU & MARQUES

E ASSOCIADOS

SOCIEDADE DE ADVOGADOS, RL

LEASE AGREEMENTS

REINFORCEMENT OF THE TENANTS PRE-EMPTION RIGHTS

THE NEW REGIME APPLICABLE TO THE TENANTS PRE-EMPTION RIGHTS HAS ENTERED IN FORCE ON OCTOBER 30

The new regime applicable to the tenants pre-emption rights foresees that the tenants have a pre-emption right in the purchase and sale or transfer in lieu of payment of premises leased for more than two years (the previous law foreseen three years).

The new regime also foresees that in case the landlord has the intention to sale, or transfer in lieu of payment, the leased premises, the same must communicate to the tenant, through registered letter with acknowledgment receipt, the sale/transfer project and relevant agreement clauses for the purposes of the relevant pre-emption right exercise. The deadline for the tenant to reply is of 30 days, as of the said communication reception date.

It will continue to apply, with the necessary adaptations, the same rules applicable to the preferential pacts, namely in case of accessory obligation, and to the preferential judicial action. Save, in case of habitational leases, in which the following specifications shall apply.

The new law determines that in case of sale of the premises (leased for habitation), together with other assets, the landlord must indicate in the communication to the tenant the price allocated to the premises, as well as the values attributed to the remaining immovable being sold.

And when the landlord demands that the pre-emption right comprises all the remaining assets, for not being separable without material prejudice, the relevant communication must mandatorily include evidences of the material prejudice, the mere statement that the non reduction of the business was engaged may not be alleged to evidence such prejudice.

Further to this amendment, in these cases, the landlord will have to prove and quantify the damages to be suffered, in case the assets are not sold together, otherwise he may not demand the sale of all the assets together.

Additionally, the new law foresees that in case of a lease agreement for habitational purposes of part of a building not under the horizontal property regime, the tenant has a pre-emption right in the same terms foreseen for the tenant of an autonomous unit.

REINFORCEMENT OF THE TENANTS PRE-EMPTION RIGHTS (CONTINUATION)

In this case, the pre-emption right must be exercised as follows:

- a) the right regards the building share corresponding to the percentage share of the leased premises by the pro-rata value of such share in relation to the transfer aggregate amount;
- b) the communication to the tenant of the sale project and relevant agreement clauses must include the amounts referred in paragraph a) above;
- c) the acquisition by the tenant is executed with the allocation of the exclusive use of the leased premises.

Finally, the new regime foresees that in case the landlord intends to sale an immovable not under the horizontal property regime, the tenants of the same, so wishing, may exercise their pre-emption rights together, acquiring, pro-rata, the entire property in co-ownership.

Along the above referred pre-emption right, the new regime still foresees the pre-emption right of the tenant in the signature of a new lease agreement by the landlord, in case of lease termination by lapse of time due to right term or termination of the administration legal powers based on which the same was signed.

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