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Should you require any copies of the legislation herein referred or wish us to respond to any questions you may have on any of the matters raised in this newsletter, please contact this law firm or send an email to any of the lawyers named above.

CONTENTS

1 - NEW LEGISLATION

• **Entrepreneur Desk** - Rule 284/2012 - Sep 20 - Amends the regulation on the "Zero licensing" and creates the "Entrepreneur Desk" in what regards its effects and experimental period.

• **Commercial Registration** - Rule 285/2012 - Sep 20 - Regulates the permanent certificate of registrations and documents, as well as the permanent certificate of the updated articles of association.

• **Rents updating** - Rule 12912/2012 - Sep 27 - Fixes, in 1,0336, the updating coefficient of the several types of lease, to be in force during 2013.

• **Natural Gas** - Decree Law 230/2012 - Oct 26 - Amends the diploma that defines the general basis of the organization and function of the natural gas national system and the principles applicable to the activities inherent to the same. Also partially adopts the European directive regarding the common rules for the natural gas internal market.

• **Crime of tax law abuse** (***"crime de abuso de confiança fiscal"***) - Supreme Court decision 8/2012 of 12-09-2012 (P. 139/09.7ID PRT.P1-A.S1) - Oct 24 - Fixes jurisprudence in the sense of considering null, due to omission of pronounce, the court decision that determines the application of a suspended prison sentence under a payment condition, for the practise of the tax law abuse crime, when the judgement on the prognoses of payment by the convicted is not favourable.

• **Taxation on income and patrimony** - Law 55-A/2012 - Oct 29 - Amends the IRS Code, the Corporate Income Tax Code, the Stamp Tax Code and the Tax General Law, foreseeing new taxation rules on capital income and capital gains and on patrimony.

• **Housing credit** - Law 59/2012 - Nov 9 - Amends the Legal Regime on Housing Credit Concession, in order to create measures to safeguard the housing credit lessees.

• **Seizure** - Law 60/2012 - Nov 9 - Amends the Civil Proceedings Code, regarding the order in which the seizure is performed and

the calculation of the basis value of the sale of immovable assets within the scope of the executive proceedings.

• **Approval of accounts** - Decree Law 250/2012 - Nov 23 - Amends the Commercial Registration Code, the Legal Regime on the Dissolution and Liquidation of Commercial Entities and the Corporate Entities National Registry Regime, envisaging the compliance of the obligation to register the approval of the companies' accounts.

• **Insolvency** - Constitutional Court Decision 328/2012 of 27-06-2012 (P. 189/12) - 16 Nov - Considers unconstitutional the rule resulting from the conjugated interpretation of dispositions contained in the Insolvency Code and in the Civil Proceedings Code, in accordance with which, within the remaining debts exoneration procedures, the economic utility of the petition and, consequently, the amount for the purposes of appeal is surveyed only by the assets of the debtor.

• **Environment** - Decree Law 252/2012 - Nov 26 - Amends the Greenhouse Gas Emission Allowance Trading Scheme Regime and partially adopts the European directive regarding this matter.

2. LABOUR LAW
RESUME OF THE MAIN AMENDMENTS OCCURRED DURING 2012

Law nr 23/2012, June 25, implemented the third amendment to the Labour Code and has entered into force on August 1, 2012, imposing some significant amendments in the scope of the labour relationships.

Due to its practical impact we highlight the following:

I – WORKING TIME ORGANIZATION

• **Hours Bench** - It has been created the possibility of establishing, by mutual agreement between employer and employee, an individual hours bench.

This hours bench by agreement allows that the work supplied beyond the working schedule shall not be considered as overtime work being in this manner recorded in a sort of "current account", being created the possibility of the normal daily working period to be increased in 2 hours and the normal weekly working period to go up to 50 hours of work, with a limit of 150 hours per year.

The compensation for the increase may be effected through **(i)** an equivalent reduction of the working time, **(ii)** a vacations period increase, or **(iii)** monetary compensation.

The law has created the possibility of the employer to extend to the generality of the employees of a team or section the hours bench regime that, in principle, would only be applicable to some of them, being created the group bench hours.

If the group hours bench is created by a collective labour regulation instrument (IRCT), the extension of its application will only be possible if the same covers 60% of the employees of the section.

If the group hours bench is applicable by virtue of an agreement with the employees, it will be essential that 75% of the employees team agree in the implementation of the hours bench, in order to allow its generalization to the section.

• **Rest Period** - It is foreseen a break (neither inferior to one nor superior to two hours) to assure that the employee does not work more than 6 straight hours, when the normal daily period of work is equal or higher than 10 hours.

• **Overtime Work** - Regarding overtime work, it is foreseen the elimination of the compensatory rest for the overtime work and it is foreseen the reduction (applicable independently of what is settled in the labour agreement or in the IRCT), of the retribution increase for the supplying of overtime work, now being applicable 25% for the first working hour, 37,5% for the subsequent hours, and 50% for rest days or public holidays.

II – VACATIONS, PUBLIC HOLIDAYS AND LEAVES REGIME

• **Vacations** - The Law has eliminated the vacations period increase, meaning that the vacations annual period is of 22 days.

When the employee resting days coincide with business days, it shall be considered for the purposes of calculating the vacation days, the Saturdays and Sundays which are not public holidays.

• **Public Holidays** - The mandatory public holidays shall be the following: January 1, Holy Friday, Easter Sunday, April 25, May 1, June 10, August 15, December 8 and December 25. This rule shall be applicable after January 1, 2013.

• **Leaves** - The effects of the unjustified leaves have been increased, these shall now determine the loss of the salary corresponding to the absence period, being considered included in the absence period the rest days and half days or public holidays immediately preceding or subsequent to the absence day.

• **Full or Partial Closing** - The employer may now close the company in full or in part, imposing the vacations benefit to the employees, when there is a business day between a public holiday occurring on a Tuesday or Thursday and a weekly resting day (extension).

For the regime to be applicable the employer will have to communicate to the employees up to December 15 of the previous year, the closing periods and the employees covered.

III – DECLARATIVE OBLIGATIONS

It is no longer mandatory to communicate the work schedules maps to the Authority for the Labour Conditions (ACT).

It will no longer be necessary to send to the ACT the internal regulation in order for this to be applicable.

It is now foreseen the tacit approval (by the ACT) of the request for the reduction or exclusion of the work schedule.

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3. LABOUR LAW
TERMINATION OF LABOUR AGREEMENTS

INTRODUCTION

Law nr 23/2012, June 25, introduced the third amendment to the Labour Code and has entered into force on August 1, 2012, im-

posing some significant amendments within the labour relationships.

The termination of labour agreements regime has suffered significant amendments, not only regarding the method of calculation of the severance payments due, but also in relation to the requirements and procedures to be followed regarding the regime of dismissal due to the extinction of the labour functions and for unsuitability.

DISMISSAL DUE TO THE EXTINCTION OF THE LABOUR FUNCTIONS

The main amendment reside in the fact that, in case of a dismissal including a group or category of employees, the seniority criteria (in the functions and in the category) has been waived, having been introduced as criteria such to be defined by the employer as long as the same is *"relevant and not discriminatory"*. Additionally it has been eliminated the obligation to place the employee in a work post compatible with its professional category.

DISMISSAL FOR UNSUITABILITY

The main amendment regarding this regime is the elimination of the need to exist a causal link between the unsuitability and the introduction of alterations in the labour functions.

Thus, the dismissal due to unsuitability is now applicable when there is a significant modification of the labour activity reflecting, for example, a *"continuous reduction of productivity or quality"*, being also possible in situations of *"technical complexity"* or direction jobs, such dismissal to occur for the mere non achievement of goals.

Notwithstanding the apparent greater flexibility of the grounds, the formal and relatively complex structure of the procedures imposed is maintained, specifically, the need to supply training and grant a period of adaptation after the training.

SEVERANCE PAY FOR THE TERMINATION OF THE LABOUR AGREEMENTS

The calculation basis for the severance pay due in case of dismissal is still the regulations foreseen for the collective dismissal, foreseen in article 366 which has suffered several amendments.

In accordance with the new wording of article 366, the amounts of the severance payments due for the termination of the labour agreements have been reduced.

The new severance payments now correspond to 20 days of the base salary and seniority bonus for each full year of service, calculated as follows:

a) the amount of the monthly base salary and seniority bonus of the employee to be considered for the purposes of the severance pay calculation may not be higher than 20 times the minimum monthly salary guaranteed;

b) the aggregate amount of the severance pay may not be higher than 12 times the monthly base salary and seniority bonus of the employee or, when the limit above foreseen is applicable, than 240 times the minimum monthly salary guaranteed;

c) the daily amount of the base salary and seniority bonus results from the division by 30 of the base monthly salary and seniority bonus;

d) in case of fraction of a year, the amount of the severance pay shall be calculated proportionally.

For the purposes of calculating the severance payments due for the termination of labour agreements, the above referred Law nr 23/2012, has established a distinction between agreements executed before or after November 1, 2011, as well as attend the time when the termination occurs before, or after October 31, 2012.

TERMINATION OF LABOUR AGREEMENTS EXECUTED BEFORE NOVEMBER 1, 2011

Since the beginning of the agreement up to October 31, 2012:
the severance pay amount shall correspond to 1 month of the base salary and seniority bonus for each full year of seniority.

When from the application of this rule results a severance pay amount equal or higher than 12 times the monthly base salary and seniority bonus of the employee or than 240 times the minimum monthly salary guaranteed, shall not be applicable the disposition of article 366, i.e., the 20 days of the base salary for each full year of seniority.

When from the application of this rule results a severance pay amount inferior to 12 times the employee's monthly base salary and seniority bonus or to 240 times the minimum monthly salary guaranteed, then shall be applicable the disposition foreseen in article 366, the aggregate amount of the severance pay not being able to be higher than these amounts.

After October 31, 2012:
the severance pay amount shall correspond to 20 days of the base monthly salary and seniority bonus for each full year of service, in accordance with article 366.

In this case the amount of the monthly base salary and seniority bonus may not be higher than 20 times the minimum monthly salary guaranteed and the aggregate amount of the severance pay may not be inferior to 3 months of the base salary and seniority bonus.

TERMINATION OF TERM LABOUR AGREEMENTS EXECUTED BEFORE NOVEMBER 1, 2011

Since the beginning of the agreement up to October 31, 2012:
the amount of the severance pay shall correspond to 3 or 2 days of the base salary and seniority bonus for each month of duration, depending on the duration of the agreement not exceeding or exceeding 6 months, respectively.

After October 31, 2012:
the severance pay amount shall correspond to 20 days of the base monthly salary and seniority bonus for each full year of service, in accordance with article 366.

In this case, the amount of the base monthly salary and seniority bonus may not be higher than 20 times the minimum monthly salary guaranteed.

ANY AGREEMENT SIGNED WITH A DATE AFTER NOVEMBER 1, 2011

The severance pay amount shall correspond to 20 days of the base monthly salary and seniority bonus for each full year of service, in accordance with the disposition of article 366.

In this case, for the calculation of the severance pay aggregate amount shall be applicable the limits of 12 times the monthly salary and seniority bonus of the employee or 240 times the minimum monthly salary guaranteed, as foreseen in article 366.

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4. URBAN LEASE LAW AMENDMENTS

The revision of the legal regime on urban lease, and the amendments to the Civil Code, to the Civil Proceedings Code and to the New Regime on Urban Lease (NRAU).

I – INTRODUCTION

On August 14, 2012, was published in the Official Gazette the Law nr 31/2012, which revises the legal regime on urban lease.

The amendments have entered into force on November 12, 2012.

The said Law envisages measures aimed to bring dynamism to the urban lease market, amending:

i) the legal regime on urban lease;

ii) the rented property eviction proceedings;

iii) the transitory regime applicable to the lease agreements signed before the New Regime on Urban Lease (NRAU) has entered in force.

The Legal Regime on Works in rented buildings and the Legal Regime on Urban Refurbishment have also been amended through autonomous diplomas.

II – AMENDMENTS TO THE URBAN LEASE REGIME (AMENDMENTS TO THE CIVIL CODE)

The main amendments approved are the following:

The parties are now allowed to freely establish the duration of the lease agreements.

It is foreseen the right of the landlord to terminate the agreement in case of non payment of the rent, costs or expenses due by the tenant for a period equal or superior to 2 months; in case of opposition by the tenant to the performance of works ordered by a public authority; or in case the tenant is in breach for more than eight days, in the payment of the rent, for more than four times, consecutive or interrupted, within a period of 12 months, in relation to each agreement.

It was also introduced the landlord's right to terminate the lease agreement (with undetermined term) in case of demolition or performance of profound refurbishment or renovation works implying the inoccupation of the rented property or also for the landlord's own residence or of its children through a simple communication to the tenant.

III – AMENDMENTS TO THE PROCEEDINGS (EVICTION)

It has been created a Special Eviction Proceedings of the rented property envisaging the fast reintroduction of the same in the lease market.

It has also been created the Lease National Desk (BNA) to assure the execution of the Special Eviction Proceedings which has jurisdiction in all national territory.

In a simplified manner, the eviction request is filed, in a specific form, at BNA. After that the defendant shall have 15 days to:

a) vacate the rented property and, being the case, pay to the petitioner the amount requested, plus the court fees paid by the same; or

b) file a defence to the petition and/or request the postponement of the property eviction.

Being filed a defence, and not being immediately accepted any dilatory exception or nullity to be decided by the judge or not being immediately decided the merit of the cause, the judge shall order the notification of the parties of the hearing session date.

The hearing session shall take place within 20 days as of the distribution of the court action to the judge.

After the evidences are brought, and unless the judge considers indispensable any other evidence procedures, in which case he may suspend the session, the sentence, grounded in a resumed manner, must be immediately dictated to the minutes.

In case the hearing session is suspended, the court procedures must be concluded within 10 days.

There being a title or a judicial decision for the eviction of the property, the execution agent, the notary or, in the absence of these or whenever the law grants him such powers, the court clerk, shall immediately go to the rented property to take possession of the same.

The title to evict the rented property, when the payment of the outstanding rents, costs or expenses has been requested, and the judicial decision sentencing the defendant in the payment of the same, comprise an enforceable title for the payment of a specific amount.

In case the tenant does not vacate the house on his own free will and when the special eviction proceedings had not been distributed to a judge, the execution agent, the notary or the court clerk, shall file a request in the judicial court with jurisdiction within the property's location in order to be authorised, within a deadline of five days, the immediate entry in the house.

Being judicially authorized the entry in the house, the execution agent, the notary or the court clerk shall immediately go to the rented property to take possession of the same.

In case of residential lease, the enforcing procedures may also be suspended when it is attested, through a medical declaration, that the procedures shall put in risk of death the person that is in the property due to serious illness reasons.

In case of a property rented for residential purposes, within the deadline to file a defence within the eviction special proceedings, the tenant may also request to the judge of the judicial court with jurisdiction within the property's location the postponement of the eviction due to imperative social reasons.

The postponement may not exceed the period of five months as of the term of the relevant sentence appeal deadline.

Both appeals - of the title for the rented property eviction by the tenant, and of the judicial decision for the rented property eviction, - have always mere non suspensive effects.

Further to the above, the regime on the postponement of the eviction of rented property for residential purposes foreseen in the Civil Proceedings Code has been amended.

IV – AMENDMENTS TO LAW NR 6/2006, FEBRUARY 27

The amendments implemented have the purpose of reinforcing the negotiations between the parties and facilitate the transition of the old agreements to the new regime, within a short period of time.

1 – RESIDENTIAL LEASE

Within the scope of the residential lease agreements, the new law foresees a negotiation mechanism depending on the landlord initiative for the purposes of transition to the NRAU and rent updating.

The negotiations procedures start with a communication from the landlord addressed to the tenant, indicating namely the amount of the rent, the type and duration of the agreement proposed, as well as the property's tax value calculated in accordance with the Property Tax Code and attaching a copy of the property's tax certificate.

The tenant has a period of 30 days to reply, and may:

a) accept the amount of the rent proposed by the landlord;

b) contest the value of the rent proposed by the landlord, proposing a new amount;

c) give his position in relation to the type and duration of the agreement proposed by the landlord;

d) terminate the lease agreement.

In the absence of a reply from the tenant the rent shall be considered accepted, as well as the type and duration of the agreement as proposed by the landlord.

In the silence or in the absence of an agreement between the parties regarding the type or duration of the agreement, the same shall be considered as executed with a fixed term of five years.

In case the tenant does not accept the amount of the rent, the type or duration of the agreement proposed by the landlord, and proposes other, the landlord, within a deadline of 30 days as of the reception of the tenant's reply, must communicate to the latter if he accepts or not the proposal.

The absence of a reply from the landlord shall be considered as an acceptance of the rent, as well of the type and duration of the agreement as proposed by the tenant.

In case the landlord does not accept the rent amount proposed by the tenant, the same may:

a) terminate the lease agreement, and pay to the tenant a compensation equivalent to five years of rent resulting from the average amount of the proposals presented by the landlord and the tenant;

b) update the rent.

The updating of the rent must follow the following criteria:

a) the updated value of the rent has as a maximum limit the annual value corresponding to 1/15 of the rented property value;

b) the value of the rented property corresponds to the result of the evaluation performed in accordance with the Property Tax Code (tax value).

In this case, the agreement being considered as executed with a fixed term, for the period of five years as of the referred communication.

The above referred compensation shall be aggravated to the double or in 50% in case the rent proposed by the tenant is not inferior to the one proposed by the landlord in more than 10% or 20%, respectively.

Save the exceptions foreseen in the law, the termination above shall be effective within a deadline of six months as of the reception of the relevant communication, the tenant having then the obligation to vacate the rented property and deliver the same to the landlord within the deadline of 30 days.

The compensation shall be paid when the rented property is delivered to the landlord.

Within the period between the reception of the communication through which the landlord terminates the agreement and the term, shall be applicable the old rent or the rent proposed by the tenant, if higher.

The law foresees two exceptions to this regime when the tenant's (including his family) RABC (corrected gross annual income) is inferior to five annual national minimum salaries (RMNA) or when the tenant is 65 years old or older or has a deficiency with an incapacity degree higher than 60%.

2 – NON RESIDENTIAL LEASE

The transition to the NRAU and the updating of the rent depend on the initiative of the landlord, who must communicate its intention to the tenant, referring:

a) the amount of the rent, the type and the duration of the agreement proposed;

b) the tax value of the rented property determined in accordance with the Property Tax Code, as referred in the property's tax certificate; and attaching,

c) copy of the property's tax certificate.

The deadline for the tenant to reply is of 30 days as of the reception of the communication from the landlord.

In its reply the tenant may (in a similar manner as described above):

a) accept the rent amount proposed by the landlord;

b) oppose to the rent amount proposed by the landlord, proposing a new value;

c) in any of the cases foreseen in the previous lines, give his position in relation to the type or duration of the agreement proposed by the landlord;

d) terminate the lease agreement.

The following exceptions are foreseen:

a) if in the rented property there is a commercial establishment opened to the public, which is a microentity;

b) when the tenant is a non profit private association, duly incorporated, dedicated to a cultural, recreational or sport non professional activity, and declared as being of public interest or of national or municipal interest with registered offices at the rented property;

c) if the rented property is utilised as a student republic house.

V - RENT INSURANCE AGREEMENT

The law also foresees the creation of a legal regime applicable to the rent insurance agreement, which has as main object the coverage of the risk of the tenant not complying with the payment obligation of a certain number of rents.

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5. TAX LAW
RECENT VAT CHANGES

The State Budget for 2013 approved by Law 66-B/2012 of 31 December introduces several amendments on VAT recovery and regularization related with bad debts and uncollectible credits.

The VAT recovery regime previously included in article 78.º of the VAT Code, is now regulated by the mentioned article and articles 78.º-A; 78.º-B; 78.º-C and 78.º-D.

1 - BAD DEBTS

Concerning bad debts, the recovery of VAT is possible in the following conditions:

a) The credit is overdue for more that a six month period; the credit does not exceed € 750, including VAT; and the debtor is a single taxpayer or a taxable entity carrying on only VAT exempt operations with no right to VAT deduction;

b) The credit is overdue for more than 24 months since the maturing date, and there are objective evidences of impairment and that actions were taken for the debts collection.

The taxpayer, in order to regularize VAT upon the credits overdue for more than 24 months, is required to file a **request of previous authorization** before the Portuguese Tax Authorities, which has to be submitted in a maximum period of 6 months. After a period of 8 months following its submission the request is considered tacitly denied or accepted, depending if the credit exceeds or not the amount of € 150.000, inclusive of VAT.

Following the filling of the previous authorization by the taxpayer to deduct VAT on bad debts, the Tax Authorities will also issue an electronic notification to the acquirer requesting the corresponding VAT regularization in favour of the Tax Authorities. If the regularization is not made a tax assessment for the VAT will be issued.

VAT cannot be regularized in case the taxpayer and the acquirer have special relations or in case of credits upon specific public entities.

Taxpayers loose the right to deduct VAT concerning certain bad debts if the debits are transferred to third entities.

2 - UNCOLLECTIBLE CREDITS

VAT taxable entities may also deduct VAT incurred in relation to uncollectible credits in the following new situations:

a) Special process of revitalization (Processo Especial de Revitalização – PER) after homologation of the revitalization plan by the judge;

b) Situations covered by the Non Judicial System of Recuperation of Companies (Sistema de Recuperação de Empresas por Via Extrajudicial - SIREVE), following the celebration of the agreement.

The abovementioned changes are only applicable to **credits due after 1 January 2013.**

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