



INFORMATIVE NOTE

2018

Short Term Rental

What has changed in the Legal Framework for Short Term Rental ?

Following Bill 524/XIII/3 (PS), 535/XIII/3 (CDS-PP), 574/XIII/3 (PCP), 653/XIII/3 (BE), 723/XIII (PAN) and approval by the Assembly of the Republic, on July 18th, 2018, of the final text that brought together the various proposals, Law no. 62/2018 was published in the Diário da República (Official Gazette) on August 22nd, 2018, which made the second amendment to the Local Accommodation Regime.

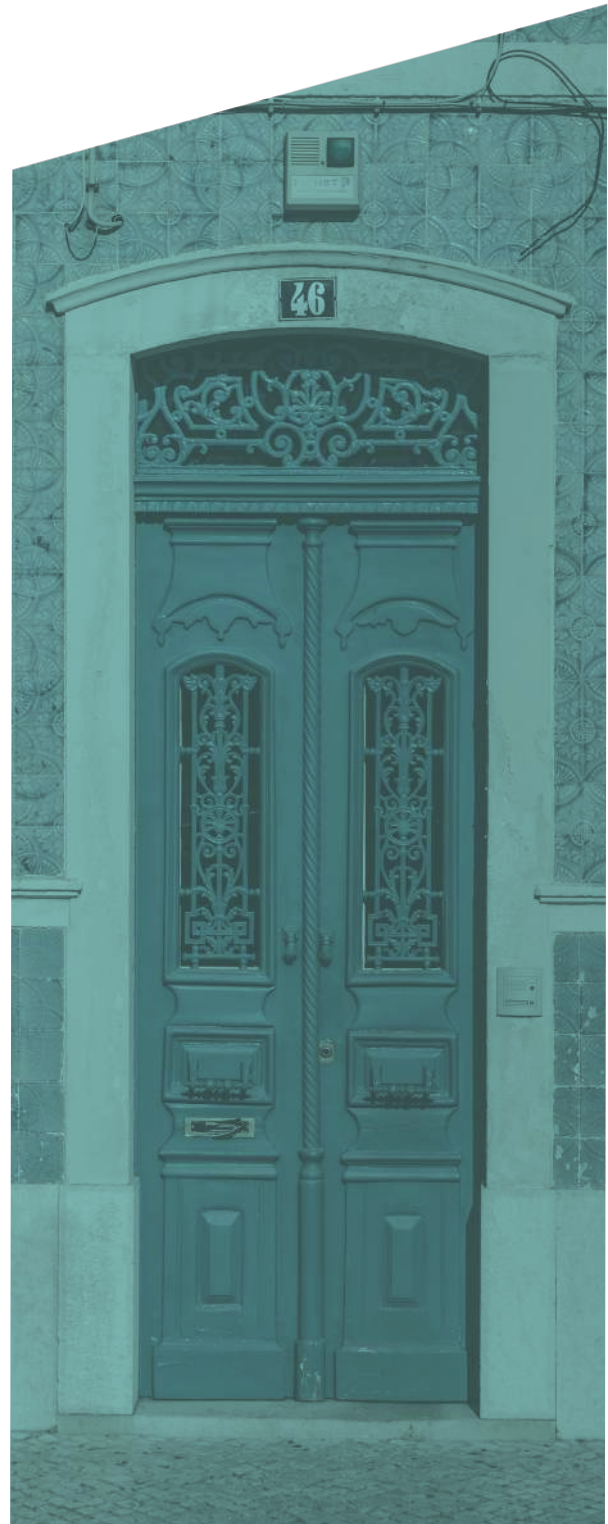
In order for you to fully understand what has changed, we highlight below the main amendments:

NOTION

// Shall be henceforth considered as local accommodation establishments those that provide temporary accommodation services for remuneration and that meet the requirements of the law, regardless of whether these services are provided to tourists or not.

MODALITIES

// A new modality of Local Accommodation establishment is created – the "Rooms" – and shall be considered as such the exploitation of local accommodation made in the residence of the lessor (that is, in the residence of the owner of the exploitation), which corresponds to his domicile for tax purposes, being that the accommodation unit is each room and it is only possible in this modality to have a maximum of three units (i.e. three rooms).



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// Thus, if there a higher number of rooms (up to 9 rooms), or if these are not integrated into the tax domicile of the operating entity, they are considered as "Lodging Establishments".

HOSTEL

// There shall be no exploitation of "Hostels" in buildings in horizontal property in which housing coexists without prior authorization by the joint owners to that effect, by means of a resolution of the assembly of joint owners, which shall have to instruct the prior communication necessary for the registration of the establishment.

// Violation of this obligation constitutes a misdemeanour punishable by a fine of € 125 to € 3250, in the event that the offender is a natural person, or a fine of € 1250 to € 32,500, in the case of a legal person.

REGISTRATION

// The prior communication submitted by the interested party through the Single Electronic Counter shall be subject to a deadline for opposition (10 or 20 days, depending on the case - vide infra), thus becoming a communication with deadline (and not a mere prior communication); therefore only after the expiry of that deadline will the registration number of the local accommodation establishment be allocated, and there will no longer be an immediate allocation.

OPPOSITION TO PRIOR COMMUNICATION WITH DEADLINE

// Within 10 days (or 20 days in the case of "Hostels") from the presentation of the communication, the territorially competent Mayor may oppose the registration of local accommodation, based on the following (exhaustive) grounds:

- a. Incorrect instruction of prior communication with deadline;
- b. If the term of impossibility of operating the local accommodation establishment in question is in progress, regardless of the operating entity, established by an earlier decision of the competent Mayor, which may not exceed one year;

c. Violation of any restriction to the installation decided by the Municipality (containment areas);

d. Lack of the proper authorization for the use of the building.

CONTAINMENT AREAS

// The territorially competent City Council can now approve, by regulation and by means of a reasoned resolution, the existence of containment areas (reassessed at least every 2 years) per parish, in whole or in part, for the installation of new local accommodation, and may impose limits on the number of establishments in that territory, which may take into account percentage limits in proportion to the real estate available for housing.

// The installation of new local accommodation establishments in containment areas requires the express authorization of the City Council, which, in case of acceptance, shall promote its registration.

// Additionally, Municipalities may, upon a reasoned resolution of the Municipal Assembly, following a proposal from the City Council, suspend, for a maximum period of 1 year, the authorization of new registrations in specifically delimited areas, until the entry into force of said regulation.

// In containment areas, one owner can only explore a maximum of **seven local accommodation establishments**.

TITLE OF OPENING TO THE PUBLIC AND ITS TRANSFERABILITY

// Shall be prohibited the transmission (except for death) of the registration number of the local accommodation establishment, in the "dwelling housing" and "apartment" modalities, located in containment areas, thus expiring in the case of:

- a. Transfer of ownership of the registration, cessation of exploitation, lease or other forms of alteration of ownership of the exploitation; or
- b. Transfer of the registered capital of the legal person owner of the registration, accumulated or not, in a percentage greater than 50%.



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TEMPORARY CESSATION / INTERDICTION OF LOCAL ACCOMMODATION EXPLOITATION

// In the event of cessation of operation of the local accommodation, the deadline for the owner of the exploitation to communicate such cessation through the Single Electronic Counter was reduced from 60 (sixty) to 10 (ten) days after its occurrence.

// It shall be mandatory that the owner of the exploitation communicates, also within a maximum period of 10 (ten) days, the cancellation of the registration and / or temporary interdiction of the exploitation to the electronic reservation platforms.

CANCELLATION OF THE REGISTRATION

// Preceded by a prior hearing, the Mayor may determine the cancellation of the registration of a local accommodation establishment:

- a. If there is nonconformity with the information or document in the register;
- b. In the case of installation of a new local accommodation establishment in violation of containment areas;
- c. In case of infringement of any of the requirements of articles 11 to 17 of the legal regime (in particular, capacity requirements, general installation requirements, safety requirements, existence of multi-risk civil liability insurance, among others).
- d. In the event that the local accommodation activity is carried out in an autonomous fraction or in part of an urban building susceptible of independent use, the joint owners' assembly may, by decision of more than half of the building mill rate, in a reasoned decision resulting from repeated and proven practice of acts that disturb the normal use of the building, as well as from acts that cause discomfort and affect the rest of the joint owners, oppose the exercise of such activity, conveying such a decision to the territorially competent Mayor, and it is then up to the latter to decide on the request for cancellation (with authority to delegate to the councillors). The decision of the Mayor shall determine the period of time for which the owner will be prevented from exploring the property, in question as a local accommodation, which may not exceed 1 year.

// It is further clarified that following the communication by the Municipality of the cancellation of registration to Turismo de Portugal and to the ASAE, it is the responsibility of Turismo de Portugal to communicate to the electronic platforms that the registration of the establishment has been cancelled.

// Should the Municipality verify that the establishment is operated without registration to that effect, it must inform the ASAE.

CAPACITY

// The maximum capacity of local accommodation establishments remains unchanged (9 rooms and 30 users), except for the "hostel" and "rooms" modality.

// In the modalities of dwelling houses, apartment, lodging establishment and rooms it is clarified that:

- a. The maximum capacity is determined by multiplying the number of rooms by two, plus the possibility of accommodating two more users in the living-room in the case of apartments and dwelling houses, according to INE indicators;
- b. Each unit, if it has adequate habitable conditions, may have a maximum of two extra beds for children up to 12 years old (violation of this obligation constitutes a (new) misdemeanour, punishable by a fine ranging from € 2,500 to € 4,000 in the case of a natural person, and € 25,000 to € 40,000 in the case of a legal person).

GENERAL REQUIREMENTS

// Local accommodation establishments shall be required to have an information book (in Portuguese, English and two other foreign languages) on the operation of the establishment and its internal rules of use, including the rules on the collection and selection of household waste, operation of appliances, noise and care to avoid disturbances that cause discomfort and affect the tranquillity and rest of the neighbours, as well as the telephone contact of the person in charge of the operation of the establishment.

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// In case the establishments are located in collective housing buildings, this book should also contain the regulations with the practices and rules of the condominium that are relevant to the accommodation and the use of the common parts. In this case, the contact of the person in charge of the establishment should also be provided to the condominium.

// This Law no. 62/2018 also provides that the regulation of the conditions for the operation and identification of each of the modalities of local accommodation establishments will be object of Ordinance.

WORKS IN THE COMMON PARTS

// It is expressly foreseen that any expenses with works that are carried out in the common parts to adapt or to license the property for the development of the local accommodation activity are to be borne by the owner of the exploitation, not applying the general rule of cost sharing by the joint owners in proportion to their mill rate.

LIABILITY INSURANCE

// The owner of the exploitation is jointly and severally liable with the guests for the damage caused by the latter in the building where the accommodation unit is located, and must subscribe and maintain a valid multi-risk civil liability insurance that protects him from assets and claims in the scope of his tourist activity, which determines the owner of the exploitation's liability and covers risks of fire and property and non-property damage caused to guests and third parties, arising from the activity of providing lodging services.

// The lack of valid insurance is grounds for cancellation of registration.

"BED & BREAKFAST" OR "GUESTHOUSE" COMMERCIAL NAME

// It is determined that the "lodging establishments" and the "rooms" may use the commercial name "Bed & Breakfast" or "Guest House".

IDENTIFICATION PLATE

// In Hostels, it is compulsory to display an identification plate on the exterior of the building near the main entrance.

// In apartments, lodging establishments and rooms, it is obligatory to display an identification plate near the entrance of the establishment.

PERIOD OF OPERATION

// Access and stay at the local accommodation establishment is reserved for guests and their guests.

// The operating entity may refuse access to it to anyone who disrupts its normal operation and / or disrespects public order, failing to comply with applicable rules of conduct, functioning and noise; said operating rules and noise rules must be duly publicized by the exploring entity.

CONTRIBUTIONS TO THE CONDOMINIUM

// The condominium may set the payment of an additional contribution to the owners who exploit in their fractions a local accommodation establishment, corresponding to the expenses resulting from the increased use of the common parts, with a limit of 30% of the annual value of the respective quota, to be decided pursuant to article 1424 of the Civil Code.

SUPERVISION

// The ASAE and the competent City Council (and not only the ASAE) shall be responsible for supervising compliance with the provisions of the law, as well as instructing their respective procedures and applying their respective fines and ancillary sanctions, and such entities may temporarily interdict the exploitation of accommodation establishments, in whole or in part.

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COMPUTER SYSTEM

// The application for registration of a local accommodation establishment must be submitted at the Single Electronic Counter, and it can no longer be presented on paper or on other digital media.

FEES EXEMPTION

// It is no longer expressly foreseen exemption of fees of prior communication with deadline, of any communications for updating data and communication of termination of the operation of the local accommodation establishment-

TRANSITIONAL PROVISIONS

// The amendments introduced by the present diploma concerning the conditions of access to the activity and installation requirements shall only apply to local accommodation establishments that are installed after its entry into force.

// Existing establishments shall have a period of two years from the date of entry into force of this law, in order to comply with the other requirements laid down therein (in particular with regard to works in common parts, civil liability insurance, identification plate and contributions to the condominium).

// Any owner of establishments who, at the time of its publication, already exceeds the limit of 7 (seven) local accommodation establishments foreseen for the containment areas, cannot, from the date of entry into force of this law, include a new real estate in the exploitation of local accommodations. Although the wording is not clear, since it does not expressly state whether this prohibition is independent of the location of the new local establishment, we believe that this was not the intention of the legislator, who only intended to restrict the opening of new establishments in containment areas.

ENTRY INTO FORCE

// 60 days after publication, i.e. these amendments shall take effect on October 22nd, 2018.

For further information please contact:

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