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The Residential Lease Agreement in Macau

Álvaro Rodrigues, Partner

The recent real estate boom in Macau has been causing some conflicts in relationships between landlords and tenants when it comes to giving notice of termination of lease agreements and the more than frequent request of the landlord to increase rent while the respective lease agreement is still in force.

Considering the present relevance and importance of these two independent, albeit related questions, we look to offer a legal insight as to whether or not is possible in the Macau SAR to give notice of termination of a lease agreement or to increase rent while the agreement is still in force.

The lease agreement is the contractual agreement whereby the lessor or landlord conveys a property and confers usage and control rights in relation thereto to the lessee or tenant for the duration of the lease and against payment of rent. A lease agreement may be terminated under certain conditions and through a variety of legal mechanisms. Here we only intend to focus on one of those mechanisms: the notice of termination.

The system for giving notice of termination of a lease agreement is established under Article 1038 of the Civil Code of Macau, where its paragraph 1 reads *“After the lease term has ended, the lease agreement shall be automatically renewed for additional*

periods of time, where neither of the parties has given notice of termination within the time and in the form prescribed or established by law.” Paragraph 2 of the same article adds: “However, the landlord may not give a notice to terminate the lease at the end of its term or at the end of its renewal terms before a period of 2 years has elapsed since the start of the lease” (underlined not in the law).

Additionally, Article 1039 stipulates that notice of termination of a lease agreement by the landlord must be given to the tenant with a minimum advance of 90 days before the end of the lease term or its renewal terms, where the duration of the lease is between one and six years.

Therefore, the practical effect of this rule is that the landlord may only give notice of termination after 2 years have elapsed from the start of the lease term. When read together with the rule set forth under the said paragraph 2 of Article 1038, which stipulates that a lease agreement is automatically renewed for another year, we have that any residential lease agreement with a term of one or more years will in fact be translated into a minimum term of 3 years.

That has also been the understanding in most jurisprudence of the Region. The Judgment of the Court of Second Instance in proceedings number 63/2005 declares that *“the legislator intended precisely to prohibit the right of the landlord to give notice of termination within the first two years [...] In other words, the landlord may not submit, before the end of the first two years of the lease term, a notice to terminate the lease agreement.”*

If the landlord may not give notice of termination of the lease term or its renewal terms during the first two years, the terms and provisions of the agreement may not be, therefore, subject to any change or amendment without the prior agreement of both parties.

In fact, according to the provisions of article 400 of the Civil Code, contracts have to be punctually performed and may only be modified or extinguished by mutual agreement of the parties or in the cases allowed by law.

Thus, if the tenant does not express his assent to the increase of rent, that proposal can always be denied on the grounds of article 400 of the Civil Code.