



Overview of extraordinary measures enacted due to the Coronavirus Pandemic

The first case of Covid-19 was released in Portugal on 2 March 2020.

On 13 March following the increase in the number of contaminations the Ministry of Internal Affairs and the Ministry of Health declared a State of Alert for the entire country and approved a first set of restrictive measures aimed at containing the spread of the pandemic, notably, closure of schools nationwide, restrictions on circulation as well as restrictions on frequency of public places such as restaurants. Said measures were implemented by Decree-Law 10-A/2020 dated 13 March and Ordinance 71-A/2020 of the Ministry of Labor and social security affairs, of that same date.

Furthermore, on 18 March 2020 upon Presidential Decree 14-A/2020, the President declared the State of Emergency for a period of 15 days. Consequently, the Council of Ministries enacted Decree 2-A/2020 dated 20 March establishing concrete measures to implemented the State of Emergency.

Both the Government and the Parliament, particularly the former, have been since then legislating on specific measures. The process has been very dynamic, and the legislative production has since been constant and very profuse.

This information is intended to provide clients who currently have businesses ongoing in Portugal, either individually or through companies locally incorporated, an overview of the measures that have been put in place with the purpose of either providing incentives to commercial activities in general or help mitigating the impacts of the COVID-19 situation.

EXTRAORDINARY MEASURES CURRENTLY IN PLACE

• CORPORATE / COMMERCIAL

a) Inhibited commercial activities

During the State of Emergency, the majority of retail shops will be shut down, exception being made for the ones selling essential products, such as supermarkets, pharmacies, stationary shops, newsagents and tobacco shops. Shops that provide delivery services and take-away services, such as restaurants, may continue operating, provided that the premises are not open to public in general.

General activities of services provision have also been suspended during the State of Emergency except for e-commerce and any services provide at distance and /or resorting to online platforms.

The following face-to-face services are allowed continuing its activity:

- Medical care and social support
- Essential public services including repair and maintenance services
- Financial services and insurance
- Undertakers
- Home repair services
- Home security services
- Cleaning, desinfestation and disinfection services
- Home delivery services
- Student housing services

Wholesale distribution and manufacturers activities have not been restricted so far.

Public services will remain open but all in person interactions with the general public are subject to prior appointment.

b) Measures taken to help support companies and maintain employment

Government has been legislating on the concession of cash support credit lines to companies with the view of providing additional support and reinforcement of companies' capacity to react and help containing the spread of the disease.

Since 13 March 2020 the following different set of measures have been launched:

- **Line of Credit “Capitalizar”**

in the amount of € 200M to be operated by commercial banks if companies evidence a decrease in turnover of at least 20% in the last 30 days and as long as tax and social security obligations are on time. This credit lines can be of two different natures:

(i) operational financing, with a mutual guarantee of up to 80%, designed preferentially for micro, small and medium-sized companies, granted in the form of loans with a maximum term of 4 years and a grace period of 12 months

(ii) overdraft facility, with a mutual guarantee of up to 80%, preferentially designed for micro, small and medium-sized companies in the form of revolving credit facilities with a maximum term of 3 years

- **Portuguese Tourism Line of Credit**

in the global amount of €60M to be operated by commercial banks, designed for micro companies in the tourism sector and substantiated in a monthly amount of € 750.00, per working position existing in the applying companies on 29 February 2020 and up to a maximum of € 20,000.00 per company, repayable free of interest in quarterly instalments with a maximum term of 3 years and a grace period of 12 months.

- **Line of Credit**

in the amount of € 3B to be operated by commercial banks to be granted to certain activities such as, restaurants and similar; specific tourism activities and certain industry activities, also designed preferably for micro, small and medium sized companies with a maximum of € 1.5M per company.

- **Deferral of loans up to 30 September 2020**

applicable to micro, small, medium sized-companies, one person businesses, private social welfare entities and non-profit associations, provided that on 18 March 2020 said entities had its tax and social security obligations as well as general financial obligations, on time.

c) Functioning of corporate bodies and annual statements

Regulation on social distancing have also determined the approval of certain measures with the view to enable companies to continue functioning properly and regularly.

First and foremost, Decree-Law 10-A/2020 dated 13 March, extended the deadline for companies to approve its 2019 financial statements, until 30 June 2020.

Furthermore, under Law 1-A/2020 dated 19 March 2020, while the State of Emergency is in place, any corporate body is allowed (actually recommended) to hold meetings of its corporate bodies resorting to means of conference call, provided that the use of said means is duly registered in the respective minutes of the meetings.

Furthermore, limited liability companies were already allowed to resort to written resolutions, provided it were not prevented from doing so in their by-laws.

• EMPLOYMENT

Under Resolution 12-A/2020 dated 13 March and Ministerial Order 71-A/2020, dated 15 March, the Government approved a first set of measures destined to provide incentives to employees and companies with a view to maintaining jobs and mitigating the effects of the crisis generated by COVID-19 virus.

Since then, the measures have been amended and developed and several new measures have been enacted by subsequent legal texts. Up to date, the following are the most relevant measures currently in force:

a) duty to adopt a contingency plan

All companies, whether in the public or private sector, are expected to adopt and have in place a contingency plan.

The contingency plan shall comprise specific measures to be taken by the companies such as, measures to prevent the risk of infection, implementation of basic hygiene measures, procedures to be adopted in case of suspect cases, asymptomatic persons that have returned from locations with active community transmission or asymptomatic persons that have been in contact with confirmed positive cases, exceptional measures (if any).

b) telework

Under Decree 2-A/2020 dated 20 March telework is now mandatory for all companies, whenever possible to implement. Being this the case, it is the employer's duty to provide all means of work, notably equipment, deemed necessary to assure the employee can perform its work from home.

Additionally, employers shall grant that employees teleworking are duly covered by a labour accidents policy, extensive to telework regimes.

Asymptomatic employees that have tested positive for Covid-19 yet are able to work, should also resort to telework.

c) extraordinary supporting measures applicable to employers and workers affected by the outbreak of Coronavirus

The first and extraordinary measures applicable to companies in crises with relation to labour matters, basically comprised the possibility of temporary exemption of employer's share of social security contributions.

On 15 March 2020, a more consistent measure was adopted granting companies in crisis the option to resort to the extraordinary mechanism of Simplified Lay Off ("SLO")

Under the Simplified Lay Off mechanism companies in the private sector deemed to be in crisis arising from the Covid-19 pandemic may submit employees to this regime and enjoy a financial aid for the payment of salaries of workers covered by the measure.

Companies may resort to two different types of SLO. The total suspension of employment contract or the reduction in working time type.

If opting for the contract suspension the employee submitted to the SLO will be granted 2/3 of his gross salary with a minimum equal to minimum wage (currently € 635.00) up to a maximum of thrice this value (€ 1,905.00).

70% of this amount will be covered by Social Security and only the remaining 30% will be paid by the employer.

If the choice follows on the SLO by reduction of working time, the employer will support the payment correspondent to the work actually performed by the employee and the above mentioned rules will apply for the remaining of the work time provided that on the whole the employee is granted the abovementioned 2/3 of his gross salary.

In both types of SLO the employer will be exempted from the payment of its share of social security contributions while the measure is in place. The employee on the other hand, will pay his share of the contributions.

The measure is applicable for an initial period of one month, renewable up to three months pursuant to the latest amendments to Ordinance 71-A/2020.

Companies are deemed to be in a situation of crisis deriving from this Pandemic should (i) the company have been shut down either due to: any decision held by the Government or health authorities; to the suspension in the supply chain; or to a general cancellation of orders (ii) the company experienced a sharp drop of monthly invoicing - of at least 40% -of its invoicing compared to the monthly average of the previous two months or the previous year equivalent period or, if the company initiated its activity less than 12 months ago, the invoicing average of the existing activity.

In return of the benefit companies will have to comply with the condition of being prevented from terminating contracts with any employees (either covered by the SLO or not) either by collective dismissals or dissolution of job, while the measures are in place and up to the following 60 (sixty) days.

d) employers' special duties and rights

Pursuant to the Portuguese Labour Code all employers have a general duty to take all necessary measures to ensure the safety and health of workers.

Companies allowed to continue operating shall abide to the guidelines and directions of health authorities, notably in regard to social distancing, sanitation of premises and surfaces, use of individual protection equipment, etc.

Given that it is the employers duty to ensure safety and health condition at the workplace, companies are deemed to have the correspondent right to request employee's information on their exposure (or potential exposure) to the virus.

e) employee's special duties

Employees by their turn have a general duty to comply with employer's orders and instructions notably in matters of health and safety as well as a general duty of loyalty and cooperation in regard to such matters, this meaning that employees have obligation to inform the employer if their health conditions or risk of exposure are able to put others at danger.

The right to strike for workers in the essential services sectors is suspended during the State of Emergency.

• TAX

Measures were also taken by Tax Authorities in order to benefit companies and self-employed professionals facing financial difficulties, notably by differing the payment of several taxes applicable to its activities.

Subsequent to Decree-Law 10-F/2020 dated 26 March the measures currently in place in Portugal are the following:

a) Company tax

- Special Payment on Account - the first instalment of which is usually due in March, can now be paid until 30 June 2020
- Submission of Annual Tax Declaration (Form 22) – usually due by 31 May 2020 can now be submitted until 31 July 2020
- Both first Payment on Account and Additional Payment on account have been postponed until 31 August 2020

The above-mentioned measures are applicable to every company.

b) VAT and staff income tax withholding

From April onwards companies and self-employed professionals are allowed to pay VAT in 3- or 6-month instalments, free of interests.

Companies and self-employed professionals qualify for these benefits in the following cases:

- (i) when their turnover in 2018 is less than € 10M or the activity was started in 2019
- (ii) companies and self-employed professionals that have been shut down
- (iii) other companies and self-employed professionals covered by the above-mentioned situations that experienced a decrease in turnover of at least 20%

c) Employer's share of social security contributions

Employers may postpone the payment of 2/3 of social security contributions referring to March, April and May 2020 to the second quarter of the year, being allowed to pay said contributions in 3- or 6-month instalments, interest-free.

Companies and self-employed professionals qualify for these benefits in the following cases:

- (i) Companies and self-employed professionals with less than 50 employees
- (ii) Companies with 50 to 249 employees experiencing a decrease in its average turnover from March to May compared to the previous year
- (iii) Companies with more than 250 employees acting in the sectors of tourism, civil aviation or any other sectors that have been shut down and experiencing decrease in turnovers above 20%

• REAL ESTATE

Extraordinary measures impacting the real estate market have also been enacted in the framework of the State of Emergency, notably under Decree-Law 10-A/2020 dated 13 March and Law 1-A/2020 dated 19 March. And more recently under Decree Law 10-J/2020, which measures have the view to protect and ensure housing rights to population in general.

Hence termination of rental agreements performed by the landlord regarding properties that corresponds to a citizen's permanent resident, which that were expected to produce its effects during the State of Emergency have been suspended.

In addition, acts, proceedings or procedures having as scope the foreclosure of mortgages over properties where citizens have their permanent residence, have also been suspended.

The possibility to deferral loans up to 30 September 2020 has also been granted to individuals concerning mortgage loans regarding properties corresponding to citizen's permanent residence.

• DISPUTE RESOLUTION

Although Courts have not been shut down, as to pending proceedings, the court holiday recess regime currently applies to most pending proceedings. The regime is actually applicable to judicial, administrative and tax courts, as well as tax enforcement bodies and arbitration proceedings.

This meaning that all deadlines referring to non-urgent proceedings are suspended effective from 12 March 2020.

In addition, the suspension is also applicable to urgent proceedings exception being made for:

- (i) procedural acts that can be performed with resort to means of remote communications such as videoconferencing or conference call;
- (ii) procedural acts refer to fundamental rights, such as, minors at risk, educational protection procedures of an urgent nature, procedural acts involving imprisoned defendants, all provided it does not require the presence of more persons in the same court room or equivalent than envisaged by recommendations of the health authorities and guidelines of Supreme Councils.

All running statutes of limitations and expiry deadlines are also currently suspended.

The suspension is also applicable to proceedings running at notary and registry offices, as well as to misdemeanors, all types of sanctioning and disciplinary procedures held by direct, indirect, regional or local administration bodies and other administrative entities, as well as regulatory bodies, including the Bank of Portugal and the Securities Market Commission.