URÍA MENÉNDEZ
PROENÇA DE CARVALHO

Guide to key legal matters relating to the COVID-19 outbreak

3 June 2020

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Introduction

The rapid and exponential evolution of the public health crisis caused by the SARS-CoV-2 coronavirus has resulted in an unprecedented situation, which poses numerous legal challenges at a national and international level.

Since the World Health Organization (**WHO**) defined the situation as an international health emergency on 30 January, the seriousness of the crisis has increased and many states, such as Portugal, have been forced to adopt measures restricting the freedom of internal and international movement, and to approve legal provisions with the dual purpose of protecting their citizens and mitigating, as far as possible, the economic consequences arising from the current situation.

In Portugal, among other measures, two decrees were approved: on 18 March, the state of emergency was declared by Decree of the President of the Republic no. 14-A/2020, which granted the Portuguese Government the power to implement measures to prevent and contain the spread of the outbreak of COVID-19 and, on 20 March, the exceptional measures to be implemented during the term of the state of emergency were approved by the Portuguese Government, under the terms of Decree of the Council of Ministers no. 2-A/2020. As the declaration of the state of emergency can only be in force for 15 days, through Decree no. 17-A/2020, of 2 April, the President of the Republic extended the State of Emergency and granted the Government new powers to introduce exceptional measures. Following this, by means of Decree no. 2-B/2020, of 2 April, the Government approved exceptional measures to be implemented during the extension of the state of emergency.

Upon termination of the state of emergency's first extension period, the President of the Republic, through Decree no. 20/2020, of 17 April, extended the state of emergency for the second time. In this context, the Government, through Decree no. 2-C/2020, of 17 April, approved the exceptional measures to be implemented during the second extension period of the state of emergency.

The President of the Republic did not renew the state of emergency for a third time and therefore it expired on 2 May 2020. Although the state of emergency came to an end on 2 May 2020, not all the measures adopted to contain and prevent the spread of the COVID-19 disease have been lifted.

The Government declared the state of calamity through the Resolution of the Council of Ministers No. 33-A/2020 of 30 April 2020, approving a wide range of exceptional measures which were in force from 3 May to 17 May 2020. Through the Resolution of the Council of Ministers No. 38/2020, of 17 May 2020, the state of calamity was extended until 31 May 2020. Finally, as the Government still considered necessary for the state of calamity to be in force, the Resolution of the Council of Ministers no. 40-A/2020 of 29 May 2020 was approved, and the state of calamity was extended until 23h59 of 14 June 2020.

The economic and social impact of the expansion of the pandemic is plain to see, and it is anticipated that it will severely affect the most diverse productive sectors, particularly tourism, trade and services and industry.

In this Guide, we intend to address – from a practical and non-exhaustive perspective – some legal issues (of a civil, commercial, procedural, administrative, labour and tax nature, among others) that economic agents should take into account under the current circumstances, namely in view of the exceptional measures that will be in force in Portugal during the state of emergency.

However, it must be pointed out that it is to be expected that new measures will be adopted over the coming weeks and that the existing measures will be adapted as the situation develops.

In order to keep our clients updated, the Knowledge Management Department of Uría Menéndez-Proença de Carvalho has prepared a **compendium of legislation** (in Portuguese) approved in the context of the health crisis emerging from the outbreak of COVID-19, which will be updated periodically to allow readers to monitor legislative changes on these matters and their impact on economic and business activity.

The analyses on the legal impact of this health crisis prepared by our teams are available on our **website** and on **LinkedIn**.

The state of calamity and exceptional measures approved by the Government

The state of emergency was in force in Portugal from 19 March 2020 to 2 May 2020, as declared by the President of the Republic through Decrees no. 14-A/2020, of 18 march, no. 17-A/2020, of 2 April 2020, and no. 20-A/2020, of 17 April 2020. Following this, the Government approved several extraordinary measures in force during each successive period of the state of emergency, through Decrees no. 2-A/2020, of 20 March 2020 ("**Decree of the Council of Ministers 2-A/2020**"), no. 2-B/2020, of 2 April 2020 ("**Decree of the Council of Ministers 2-B/2020**"), and no. 2-C/2020, of 17 April 2020 ("**Decree of the Council of Ministers 2-C/2020**", together with the other decrees, the "**Decrees of the Council of Ministers**").

Although the state of emergency ended on 2 May 2020, not all the measures adopted to contain and prevent the spread of the COVID-19 disease were lifted.

In fact, on 30 April 2020, the Portuguese Government approved the Resolution of the Council of Ministers no. 33-A/2020 ("**Resolution of the Council of Ministers 33-A/2020**"), through which it declared a state of calamity throughout the national territory, under article 19 of the Basic Law of Civil Protection (Law 27/2006, of 3 July 2006, as amended) and article 17 of Law 81/2009, of 21 August 2009, as amended, that approved the public health surveillance system.

This Resolution of the Council of Ministers 33-A/2020 imposed several extraordinary measures to remain in force during the state of calamity, including measures regarding:

i. Limiting and restricting the movement of people;

ii. Limiting and restricting certain economic activities; and

iii. Setting rules and standards for the organisation of work and the operating of establishments.

Given that according to the Resolution of the Council of Ministers 33-A/2020, the state of calamity would end at 23:59 on 17 May 2020, the Government approved the Resolution of the Council of Ministers no. 38/2020, of 17 May 2020 ("**Resolution of the Council of Ministers 38/2020**"), which

(i) extended the state of calamity and (ii) reduced the containment and confinement measures that had been in force until then.

Finally, since the Resolution of the Council of Ministers 38/2020 established that the state of calamity would end at 23:59 on 31 May 2020, the Government extended it once again with Resolution of the Council of Ministers no. 40-A/2020 of 29 May ("**Resolution of the Council of Ministers 40-A/2020**").

The Resolution of the Council of Ministers 40-A/2020 significantly reduced the containment and confinement measures that had been in force until then. Indeed, with the entry into force of the Resolution of the Council of Ministers 40-A/2020, the following measures ceased to be in force:

i. Civic duty of home confinement;

ii. Suspension of retail and service activities to the public;

iii. Remote working obligations;

iv. Prohibition of events.

Additionally, the list of establishments and facilities that are to remain closed was significantly reduced. Among others, the following establishments can therefore reopen:

i. Auditoriums, cinemas, theatres and concert halls;

ii. Shopping centres;

iii. Several buildings, facilities and indoor and outdoor venues for sports purposes.

Considering the recent outbreaks of COVID-19 located in the Lisbon Metropolitan Area, some exceptional measures were maintained in that territory.

Despite the progressive lifting of the containment and confinement measures, since some of the measures in force affect several fundamental rights (e.g. compulsory confinement), we cannot ignore the fact that their constitutionality and legality is questionable.

The scope of the Resolution of the Council of Ministers 40-A/2020 is as follows:

i. Territorial: the entire national territory.

ii. Time frame:

a. Entry into force:

- Some measures for religious ceremonies and other events at 00:00 hrs on 30 May 2020;
- The remaining measures at 00:00 hrs on 1 June 2020;

b. Termination of effects: at 23:59 on 14 June 2020, without prejudice to a possible extension or modification if necessary.

Finally, the Government approved some measures previously regulated in the decrees implementing the state of emergency through Decree-Law no. 20/2020, of 1 May 2020 ("**Decree-Law 20/2020**"), Decree-Law no. 22/2020, of 16 May 2020 ("**Decree-Law 22/2020**") and Decree-Law no. 24-A/2020, of 29 May 2020 ("**Decree-Law 24-A/2020**"), which amended Decree-Law no. 10-A/2020, of 13 March 2020 ("**Decree-Law 10-A/2020**").

The following is a summary of the measures approved by the Resolution of the Council of Ministers 40-A/2020, Decree-Law 20/2020, Decree-Law 22/2020 and Decree-Law 24-A/2020:

MEASURES AFFECTING THE FREEDOM OF MOVEMENT

- **Compulsory confinement**

  Compulsory confinement of COVID-19 patients, citizens infected with SARS-COv2 and citizens under active surveillance by healthcare authorities in a healthcare establishment, at home, or in another location to be defined by the health authorities, under threat of prosecution for disobedience. To this end, health authorities must report to security forces and services on the implementation of the mandatory confinement measures.

- **Visiting residents at care facilities**

  Visiting residents of care homes, long-term care homes and other facilities dedicated to the elderly, as well as care facilities for infants, children, young people and those with disabilities are

permitted, provided that the rules defined by the Directorate General for Health ("**DGS**") are complied with.

Upon assessing the specific epidemiological situation, the DGS, in coordination with the local health authority and the Minister for Health, may suspend visits to any the aforementioned facilities for a limited time.

- **Physical activity and sports**

Individual physical activity and individual sports (i.e. all sports other than handball, basketball, korfball, football, hockey, skating, rugby or volleyball) are allowed in a non-competitive context .

In a competitive context, (i) individual sport competitions without physical contact and (ii) the 1st Division Professional Football League (*1.ª Liga de Futebol Profissional*) are allowed, provided that:

(i) They are held outdoors;

(ii) Behind closed doors; and

(iii) In compliance with the DGS specific guidelines.

Collective sports by federated athletes is also allowed, provided that the DGS specific guidelines are complied with.

Physical activity and outdoor sports or in gyms and fitness centres is only permitted when the DGS guidelines are complied with.

The sports facilities in operation must comply with the rules set out below for operating establishments open to the public.

- **Masks and protective visors**

It is mandatory for people aged 10 or over to wear masks or protective visors:

(i) To access or remain in:

a. Commercial and service establishments;

b. Public buildings or buildings for public use where services are provided or public acts are performed;

c. In educational establishments and day-care centres for teaching, non-teaching staff and students;

d. Inside theatres, cinemas and similar venues.

(ii) To travel on collective passenger transport[1].

The obligation referred to in (i) will be waived when, due to the nature of the activities being carried out, the use of a mask or visor is impracticable. The obligation referred to in (i) and (ii) will be waived upon the presentation of (i) a Multipurpose Medical Certificate of Disability or a medical statement for anyone with cognitive or developmental disabilities or psychiatric disorders or (ii) a medical statement certifying that the person's medical condition is not compatible with the use of masks or visors.

The persons or entities, public or private, that are responsible for the spaces or establishments, services and public buildings or transport methods, must ensure that this obligation is complied with. In the event of non-compliance, they must (i) inform those not wearing a mask or a protective visor that they cannot access, remain or use the spaces, establishments or collective passenger transport and (ii) inform the authorities and the security forces if they refuse to comply with this obligation.

Failure to wear a mask or a protective visor when using public passenger transport is considered an administrative offence, punishable with fines ranging between EUR 120.00 and EUR 350.00.

[1] The use of collective passenger transport starts when the passenger (i) crosses the entrance doors of trains, buses, trolleybuses, electric cars and light rails and remains in them when the journey begins; or (ii) enters the boarding bay for boats or the access halls of train stations and the underground system, when access is limited, and is considered to remains in use until the passenger has departed through the relevant exit route.

- **Public beaches**

Finally, Decree-Law no. 24/2020, of 25 May, governs the access, occupancy levels and the use of public beaches, in the context of the COVID-19 pandemic, for the 2020 bathing season. Among other measures, this decree-law stipulates that:

(i) People who are not part of the same group must maintain a safety distance of 1.5 meters;

(ii) Parasols must be set up at least with a distance of 3 meters from other parasols, counted from the outer limit of said parasols;

Pursuant to this decree-law, the Portuguese Environmental Agency (APA) shall approve the calculation methods and the potential occupancy capacity of public beaches.

MEASURES AFFECTING ESTABLISHMENTS AND ACTIVITIES

- **Closure of establishments and suspension of activities**

The establishments and facilities in which the following activities take place remain closed:

(i) Recreational, leisure and entertainment activities: party or dancing halls, recreational or amusement parks for children, water parks and other similar premises or facilities;

(ii) Cultural and artistic activities: national, regional and municipal caves, public or private, and bullrings;

(iii) Sports activities (except for federated athletes' training):

a. Indoor venues or arenas (except for individual sports with no physical contact), indoor sports halls or venues for futsal, basketball, handball, volleyball, roller hockey and similar venues, indoor venues for ice hockey, and similar premises, as well as indoor athletics tracks and the like);

b. Enclosures for contact sports (e.g. boxing rings, martial arts establishments and similar premises).

(iv) Activities in open spaces and public streets: parades, popular festivities, folklore shows and similar events;

(v) Gambling and betting activities: arcades and recreation halls;

(vi) Beverage serving activities: beverage establishments, with or without dancefloors (e.g. bars, discos), unless they are part of tourist or accommodation establishments, to provide an exclusive service for their guests;

(vii) Thermal baths, spas, solariums and similar establishments; and

(viii) Language schools (except to sit tests and exams) and tutoring centres .

Failure to close establishments, as provided for in the Resolution of the Council of Ministers 40-A/2020, may lead to prosecution for the crime of disobedience.

- **Establishments open to the public and activities allowed**

Establishments, services and activities that are not included in the previous section may open and operate.

However, a number of restrictions and limitations remain in place as regards the establishments, services and activities, as mentioned below:

– **Restaurants**

Restaurants and similar establishments can now open provided that:

(i) They comply with the DGS' guidelines;

(ii) Occupancy levels:

a. Do not exceed 50% of the maximum capacity; or

b. Waterproof physical barriers are used to separate customers facing each other and a 1.5 metres' distance is kept between tables;

(iii) No new clients are permitted after 23h00; and

(iv) They use a table-booking system.

Restaurants may open up their terraces to customers, provided that the DGS' guidelines are adhered to.

Food courts must follow the DGS guidelines for the restaurant sector, with the necessary adaptations, and avoid crowds.

Establishments that intend to continue offering, on a permanent or part-time basis, take-away or home-deliveries, are exempt from having to obtain take-away or home-delivery licences.

– **Fairs and markets**

The Resolution of the Council of Ministers 40-A/2020 also allows fairs and markets to be held, provided that a contingency plan for COVID-19 has been prepared or approved by the competent local authority. The contingency plan must comply with the rules in force for retail establishments (see below), as well as the DGS' guidelines, and thus provide for a set of procedures to prevent and control the spreading.

– **Museums, monuments, palaces, archaeological sites and similar**

Museums, monuments, palaces, archaeological sites and other similar locations may remain open provided they comply with the rules set out in article 17 of the Resolution of the Council of Ministers 40-A/2020, of which the following are worth noting:

(i) Compliance with the DGS guidelines; and

(ii) A guarantee that each visitor has at least a 20 m2 grid around them and that members of different households keep a safe distance (2 m) from other visitors.

– **Cultural events**

The operation of concert halls, theatres, cinemas and similar venues, as well as cultural events to be held outdoors are permitted, provided that the following rules are observed:

(i) The rules on occupancy levels, social distancing and hygiene mentioned below shall be complied with;

(ii) In concert halls, theatres and cinemas:

a. A vacant seat must be kept between spectators that do not live together and the seats must be mismatched in relation to the next row;

b. If there is a stage, a minimum distance of two meters must be kept between the stage and the front row;

(iii) In outdoor venues:

a. Seats must be identified in advance, with a physical distance between spectators of one and a half meters;

b. If there is a stage, a minimum distance of two meters must be kept between the stage and the front row;

(iv) Service stations should preferably be equipped with protective barriers;

(v) Advance purchase of tickets by electronic means and payments by contactless means, bank card or similar methods are preferred;

(vi) Whenever applicable, ventilation systems should be maintained and operate without recirculating air;

(vii) Wherever possible, live scenes and performances should be adapted to minimise physical contact between those involved and to maintain the recommended safety distance;

(viii) In the areas of food and beverage services in these cultural events, the guidelines of the DGS for the restaurant sector should be respected.

– **Gambling establishments, casinos, bingos or similar establishments**

Gambling establishments, casinos, bingos or the like are allowed to operate as long as they:

(i) Comply with the guidelines and instructions laid down specifically for that purpose by the DGS;

(ii) Have a specific protocol for cleaning and sanitising gambling areas;

(iii) Privilege the execution of transactions by TPA;

(iv) Do not allow people who do not intend to gamble, eat or drink inside the establishments.

– **Personal care and aesthetics**

Hairdressing salons, barbershops, beauty parlours, tattoo and body piercing establishments or studios are allowed to operate by appointment.

Massages are also permitted in beauty parlours, gyms or similar establishments.

These establishments must comply with the DGS guidelines.

- **Rules that establishments open to the public must comply with**

In all establishments, facilities and premises open to the public, the rules set out in articles 6 to 11 of the Resolution of the Council of Ministers 40-A/2020 must be observed, including the following rules:

– **Physical distancing rules**

(i) Maximum limit of 0.05 customers per m2 of area for the public (e.g. 5 people per 100 m2). This rule is not applicable to services establishments;

(ii) Measures must be adopted to ensure that:

a. Persons remain inside the establishment only for the amount of time strictly necessary to purchase the required products; and

b. A minimum distance of two metres is kept between persons, unless otherwise specifically provided for or directed by the DGS;

(iii) Waiting for assistance inside service establishments is prohibited and an appointment system should be preferably provided;

(iv) Identify, whenever possible, entry and exit mechanisms through separate doors.

– **Rules of hygiene**

Economic operators must:

(i) Promote cleaning and disinfection:

a. This must be done daily and periodically for spaces, equipment, objects and surfaces with which there is an intensive contact;

b. After each use of equipment, objects, surfaces products and utensils in direct contact with the clients (e.g. automatic payment terminals, scales in supermarkets); and

c. In relation to products that are exchanged and returned, before they are made available for sale again, except when this is not possible or compromises the quality of the products;

(ii) Limit direct contact with products or equipment, as well as unpackaged items, by workers and customers as far as possible;

(iii) Control access to fitting rooms – in clothing and similar retail establishments – ensuring that displays, clothing supports and hangers are disinfected after each use; and

(iv) Ensure appropriate disinfection solutions are available for workers and customers, inside the establishments and in all the entrance and exit doors.

– **Hours of service**

(i) The opening hours of the establishments may be adjusted by the economic operators or by the Minister of State, Economy and Digital Transition;

(ii) Establishments that have only resumed their activity after the Resolution of the Council of Ministers 33-A/2020, the Resolution of the Council of Ministers 38/2020 or the Resolution of the Council of Ministers 40-A/2020 entered into force may not open before 10:00; and

(iii) Establishments for which normal opening hours have changed as a result of the preceding paragraph may postpone their closing hours for an equivalent period;

(iv) Establishments may close during certain periods of the day to carry out cleaning operations and for the disinfection of workers, products or areas open to the public.

The provisions set out in paragraphs ii. and iii. above do not apply to hairdressing salons, barbershops, beauty parlours, restaurants and similar establishments, cafeterias, tea rooms and similar premises, driving schools and technical inspection centres of vehicles. .

– **Priority service**

Retail or service establishments that maintain their activity must give priority to health professionals, members of the security services and forces, protection and rescue personnel, armed forces personnel and social support services.

– **Duty to provide information**

Establishments in operation must clearly and visibly inform customers about the new rules of operation, maximum capacity, access, priority, care, hygiene, safety and other relevant rules applicable to each establishment.

– **Other rules**

Establishments in operation must also comply with:

(i) The rules defined by the DGS;

(ii) The rules set out in codes of conduct approved for certain business sectors or establishments, as long as they do not contradict the provisions of the Resolution of the Council of Ministers 40-A/2020.

- **Exceptional opening of social support establishments**

During the state of calamity, social support establishments that are ready to be put into service may open even if it the operation licence was not yet granted.

PUBLIC SERVICES

- **Closure of establishments and suspension of activities**

  Public services maintain face-to-face services by appointment, maintaining the provision of services through digital media and contact centres with citizens and companies.

  The rules set out above for establishments open to the public apply to public services offering face-to-face services.

LABOUR MEASURES

- **Remote working**

  The employer must provide the worker with adequate safety and health conditions for the prevention of infection risks arising from the COVID-19 pandemic, and may in particular adopt the remote working regime, under the terms of the Labour Code.

  When the remote working regime is not adopted, measures for the prevention and mitigation of risks arising from the pandemic may also be implemented, within the maximum limits of the normal working periods and respecting the right to daily and weekly rest provided for in the law or in the applicable collective bargaining instrument, notably:

  (i) Implement daily or weekly schedules between remote workers and workers attending the work place;

  (ii) Different entry and exit times;

  (iii) Different breaks and meal times.

  To this end, the employer may change the working times under the relevant management powers, provided that the procedure set out in the applicable legislation is followed.

  The remote working regime is mandatory in the following situations, regardless of the employment relationship and whenever the functions in question allow it:

  (i) When the worker so requests and:

a. The worker is covered by the exceptional protection regime for immunosuppressed and chronically ill people, under the terms of article 25-A of Decree-Law 10-A/2020 and provides a medical certificate as evidence;

b. The worker is a disabled worker, with a recognised disability of 60% or more;

c. The worker has one or more children or other dependants under the age of 12, or, regardless of age, dependants with a disability or chronic illness and for as long as the suspension of teaching and non-teaching activities in schools or social equipment to support early childhood or disability is maintained, outside of the school year breaks. The obligation only applies to one of the parents, regardless of the number of children or other dependants.

(ii) Where the physical spaces and the work organisation do not permit compliance with the guidelines of the DGS and of the Authority for Working Conditions on the matter.

- **Catering establishments**

  Catering establishments (e.g. restaurants) may require their workers, with their consent, to carry out activities necessary for the operation of take-away or home-delivery services, even if these activities do not form part of their employment contracts.

EVENTS, CELEBRATIONS AND FUNERALS

Celebrations and other events involving a crowd of more than twenty people are not allowed. Only in the event that that the Minister of the Interior and the Minister of Health jointly authorise celebrations and events with a larger number of people can these take place.

The DGS defines the specific guidelines for the following events:

(i) Religious ceremonies, including community celebrations;

(ii) Family events, including weddings and baptisms, both for civil and religious ceremonies and for other commemorative events;

(iii) Corporate events held in appropriate venues (e.g. congress halls, tourist establishments, venues suitable for trade fairs and outdoor spaces).

In the absence of these guidelines, the organisers of the events must observe the rules mentioned above regarding physical distance and hygiene in establishments open to the public, as well as the rules mentioned above regarding catering establishments, and participants must wear a mask or visor in the enclosed spaces.

The holding of funerals is subject to the organisational measures that may be implemented by the local authority that manages the respective cemetery. The rules imposed may not restrict the presence at the funeral of a spouse or de facto cohabitant, ascendants, descendants or other relatives.

LISBON METROPOLITAN AREA

Specific limitations are set out for the Lisbon Metropolitan Area ("**LMA**"), notably:

(i) The access, movement or presence of people in spaces frequented by the public, as well as the gatherings of people on the public streets, are limited to 10 people (unless they belong to the same household);

(ii) Activities in retail and service establishments open to the public shall remain suspended if they:

a. Have a sales or service area of more than 400 m2;

b. Are located in commercial centres (e.g. shopping centres), unless they have separate street access;

(iii) Food-courts in commercial centres are to remain closed;

(iv) Citizen's bureaus (*Lojas do Cidadão*) will remain closed to the general public, but can take appointments from 15 June 2020. Face-to-face services may continue to be provided in Citizen's bureaus by appointment only, in locations where there are no decentralised offices.

(v) Vehicles with a capacity of more than five people, other than public transport, may only circulate, unless all occupants are part of the same household, with two thirds of their capacity, and occupants must wear a mask or visor, with the exceptions provided for in Article 13-B of Decree-Law 10-A/2020 in its current wording.

The following establishments are excluded from the suspension listed above under point (ii):

(i) Retail establishments as provided for in Annex II to Resolution of the Council of Ministers 38/2020, of which the following stand out:

a. Minimarkets, supermarkets, hypermarkets, greengrocers, butchers, fishmongers, fish markets, bakeries, markets and fairs;

b. Stationery shops, tobacconists and shops that sell games (e.g. board games);

c. Establishments selling cosmetics, hygiene products, pharmaceuticals, medical, orthopaedic, optical, natural and dietetic products;

d. Pharmacies;

e. Pet shops or shops that sell pet food or pet pharmaceuticals;

f. Shops selling flowers, plants, seeds and fertiliser, as well as products to protect plants and biocides;

g. Hardware stores and DIY stores;

h. Establishments selling vehicles (e.g. bicycles, cars, boats), tractors and agricultural machinery, as well as parts, accessories or fuel for these vehicles and equipment;

i. Establishments selling household appliances, computer and communication equipment; and

j. Bookshops and music shops.

(ii) Establishments providing services to the public as referred to in Annex II to Resolution of the Council of Ministers 38/2020, including:

a. Facilities providing banking, financial and insurance services;

b. Establishments providing medical, veterinary and social-support services;

c. Establishments that provide maintenance and repair services for vehicles (e.g. bicycles, cars, boats), tractors, agricultural machinery, domestic appliances, IT and communications equipment;

d. Establishments that carry out funerary and related activities;

e. Tourist establishments and local lodgings;

f. Student housing facilities;

g. Hairdressing salons, barbershops and beauty parlours, by appointment only;

h. Real estate service-providers;

i. Washing and dry cleaning services for textiles and leather;

j. Restaurants and similar food establishments, cafeterias, tea rooms and similar premises.

(iii) Other retail establishments that only offer home delivery services or provide the goods at the door, in which case the public and consumers are not allowed to enter the premises;

(iv) Establishments that have a sales or service area of more than 400 m2 when they have an authorisation from the competent municipality to operate and as long as they comply with the remaining rules and demands set out;

(v) Establishments that have a sales or service area of more than 400 m2, if they limit their sales or service area to 400 m2;

The competent municipalities in the LMA will reassess the operation of establishments with an area exceeding 400 m2 which they have authorised under the Resolution of the Council of Ministers 38/2020 38/2020 and will also reassess the running of fairs which have resumed operation under the same resolution.

MONITORING OF THE MEASURES

The Resolution of the Council of Ministers 40-A/2020 established that it is the responsibility of the security forces and services, as well as of the municipal police, to (i) monitor compliance with the approved measures, (ii) order the closure of establishments and prevent the activities set out in Annex 1 of the Resolution of the Council of Ministers 40-A/2020, (iii) issue orders (namely to return home) and report the crimes of disobedience set out in Resolution of the Council of Ministers 40-A/2020, (iv) recommend that people do not gather in public streets and (v) and disperse gatherings of more than 20[2] people, unless they live in the same household.

Disobedience and resistance to the legitimate orders of competent authorities, when issued under the Resolution of the Council of Ministers 40-A/2020, are sanctioned under criminal law and the respective minimum and maximum limits of the penalties are increased by one-third, pursuant to paragraph 4 of article 6 of Law no. 27/2006 of 3 July 2006.

The security forces and services must report the level of public compliance with the Resolution of the Council of Ministers 40-A/2020, so that the Government may assess the situation and the need to approve a sanctioning framework for breaches of the special duty of protection or the general duty of home confinement.

GENERAL DUTY OF COOPERATION

During the period of the state of calamity, citizens and entities have a duty to cooperate, namely by obeying orders or instructions from the bodies and agents responsible for safety, civil protection and public health in the prompt fulfilment of the requests made to them by the competent entities to implement the measures established in the Resolution of the Council of Ministers 40-A/2020.

[2] Without prejudice to the rules applicable in the LMA, according to which gatherings of 10 or more people should disperse, unless they live in the same household.

ADDITIONAL MEASURES

Under the Basic Law of Civil Protection, the declaration of the state of calamity also entails the following:

- **Free access to property and use of private natural or energy resources by civil protection agents**

  Civil protection agents are permitted to access private property, as well as to use private natural or energy resources, to the extent strictly necessary to restore normal living conditions.

- **Civil requisition**

  Goods or services may be requisitioned on a temporary basis, in particular because of the urgency and public and national interest at stake that justify the requisition.

  The requisition of goods or services is determined by order of the Ministers of Internal Administration and Finance, which establishes the object of the requisition, the foreseeable duration, the beneficiary and the entity responsible for paying compensation for losses resulting from the requisition.

  In relation to the compensation due for the requisition, the rules regarding the compensation for the temporary requisition of real estate contained in the Expropriations Code will apply, with the necessary adaptations.

- **Municipalities' pre-emption rights**

  Municipalities are granted pre-emption rights regarding onerous transactions/transfers of land and buildings between private parties, for a period of two years.

  Private individuals wishing to sell real estate must notify the mayor of the respective municipality of the intended transaction/transfer in order to allow the municipality to exercise the pre-emption right.

- **Public procurement**

  The contracting of public works contracts and the supply of goods and acquisition of services with a view to urgently preventing or responding to situations arising from the events that led to the declaration of the state of calamity:

  (i) May be carried out by direct award procedure, according to the list of entities authorised to adopt this procedure, approved by order of the Minister of Internal Administration and Finance;

  (ii) Are exempt from the prior approval of the Court of Auditors.

Impact on agreements and contractual obligations

The COVID-19 pandemic will have implications for agreements that are currently in force, particularly as a result of the measures imposed or to be imposed by the authorities aiming to address this outbreak, namely the measures established by the Decrees of the Council of Ministers, by the Resolution of the Council of Ministers 33-A/2020, by the Resolution of the Council of Ministers 38/2020 and by the Resolution of the Council of Ministers 40-A/2020, which will probably give rise to two major scenarios: (i) the first refers to situations in which the exceptional measures prevent one of the parties from complying with some of its obligations (**measures that constitute an objective impossibility** (*impossibilidade objectiva*)); and (ii) the second, which will occur mainly in the long term or in chain / succession contracts (*trato sucessivo*) and which refers to those situations in which the exceptional measures make it overly burdensome for one of the parties to comply with the terms of the contract (**measures which allow for the termination or modification of the contract as a result of an abnormal change of circumstances**).

However, we would like to draw your attention to the fact that the contract itself may provide for situations of objective impossibility or allow for termination due to an abnormal change of circumstances, which will take precedence over the legal measures in place. Therefore, it is necessary to analyse the case at hand and in particular, check if any of the clauses in the agreement state : (i) that the parties have established the occurrence of a public emergency, or similar events, as a ground to end or suspend the contract, similar to *force majeure* clauses; and if (ii) the parties have included a clause about risk distribution in the event of an abnormal change of circumstances, attributing such risk to the injured party, which in principle would prevent such party from invoking this abnormal change of circumstances clause as a ground to terminate or modify the agreement.

It is important to carry out a thorough analysis of the contractual clauses and to interpret the goals of the parties without losing sight of the main purpose of the agreement. It may be useful to assess the parties' goals, for instance, by considering the way in which the parties have complied with the

agreement in the past when faced with exceptional or unexpected events that had an impact on the execution of the agreement, in order to see how the risk was distributed in such situations.

OBJECTIVE IMPOSSIBILITY OF COMPLYING WITH THE AGREEMENT

An obligation is extinguished if it becomes definitively impossible to comply with and it will be suspended, if said obligation is only temporarily impossible to comply with, for the time during which the event that brought about the impossibility to complete the obligation lasts.

Therefore, if the exceptional measures constitute an objective impossibility, the debtor who has not complied with its obligation is discharged from paying any damages and / or penalty clauses set out in the agreement. In this event, the debtor has the burden to prove that: (i) it is not possible to perform its obligation; (ii) the impossibility to perform such obligation is not attributable to him (as may happen, in some cases, due to the exceptional measures adopted); (iii) the impossibility is objective and prevents the party and any other third party from performing its obligation; (iv) the impossibility is absolute (*i.e.,* it cannot be overcome); and (v) the impossibility is complete or partial (if the impossibility prevents the performance of part of or the entire obligation).

The case law of the Portuguese courts is highly conservative in relation to its interpretation of the objective impossibility, which needs to be absolute and, in particular, requires there to be "*an objective barrier that cannot be overcome by the debtor nor by any third party acting on his behalf* " or an "*objective impossibility*", "*real, in the sense that it cannot be performed by anyone*".

In particular, in relation to pecuniary obligations (for instance, the payment of rent), legal scholars and the Portuguese courts have continuously considered that the debtor's financial difficulties, even when caused by extreme circumstances, such as a crisis, do not constitute a real objective impossibility resulting in the inability to comply with the agreement. Only in exceptional circumstances is it possible to successfully invoke the objective impossibility regime in relation to pecuniary obligations, namely in extreme scenarios (*e.g.* interruption to the functioning of the bank system which directly makes it impossible to pay rent due on time).

Regarding non-pecuniary obligations (for instance, the rendering of services or construction works), the exceptional measures might create a real objective impossibility, which will need to be assessed on a case-by-case basis.

If the debtor invokes the objective impossibility regime and stops performing its obligation, and where the requirements for this regime to apply are not fulfilled, there is a breach of contract, which results in the obligation to pay for the damage caused to the creditor. Nonetheless, given the current state of emergency, it cannot be ruled out that there is a possibility of the courts being very comprehensive and moderate when awarding damages, without prejudice to a case-by-case analysis, namely taking into account the way in which the adopted measures affected the compliance with the obligation involved and the interest and the value that the creditor had in the agreement.

With regard to bilateral agreements, if the exceptional measures adopted prevent the debtor from performing its obligation, the creditor is not bound to comply with its obligation and may request the restitution of the obligation that it might have already performed, within the terms of unjust enrichment.

TERMINATION OR MODIFICATION OF THE AGREEMENT AS A RESULT OF AN ABNORMAL CHANGE OF CIRCUMSTANCES

The termination or modification, according to equity considerations, based on an abnormal change of circumstances depends on the fulfilment of the following requirements: (i) the occurrence of an abnormal change of the circumstances on which the parties based their decision to negotiate (this usually relates to political, social and economic upheavals after the date on which the agreement was entered into); (ii) the circumstances are abnormal and therefore unexpected for any informed average person at the time at which the agreement was entered into; (iii) the circumstances are seriously harmful to one of the parties, making it excessively burdensome to force the party to comply with the agreement, from an economic or personal perspective; (iv) the change brought about as a result of the circumstances exceeds the risks inherent to the agreement (inherent to the nature or purpose of the agreement or the ones that might have been expressly agreed within the contract); (v) demanding the party to comply with its contractual obligations goes against good faith,

i.e., the change of circumstances leads to such an imbalance of the obligations that it is not tolerable, in good faith, to demand that the injured party who is affected by the change of circumstances to comply with its obligation; (vi) the party affected by the change of circumstances cannot already be overdue in complying with its obligation at the time when the change of circumstances occurred; and (vii) if it applies to a bilateral agreement, it can only be terminated by the injured party if it is in such a position that it is able to give back what it may have received.

The following should be noted regarding those requirements and their fulfilment.

The Portuguese courts have been very conservative regarding events that might constitute an abnormal change of circumstances. It will be necessary to analyse the circumstances on a case-by case-basis to see if the measures adopted to address the COVID-19 outbreak amount to an abnormal change of circumstances that allows the modification or the equity termination of the contact.

In fact, as a result of the fulfilment of the abovementioned requirements, legal consequences may arise, such as: (i) the modification of the contractual terms, according to equity principles, as a way to achieve an equitable distribution of the damage caused by the measures, if that is possible or (ii) the termination of the agreement.

In spite of the fact that there is no consensus on this subject, most of the recent case law has acknowledged a termination of the agreement under these circumstances may take place and take effect by means of a declaration from one party to another and it would not be necessary for the court to intervene (without prejudice to a subsequent judgment in relation to the grounds to terminate an agreement).

EVIDENTIAL VALUE OF SCANNED COPIES AND PHOTOCOPIES

Article 16-A of Decree-Law 10-A/2020 (added by Decree-Law no. 12-A/2020, of 6 April) introduced two relevant rules on the evidential value of documents and signatures, establishing that:

(i) scanned copies and photocopies of acts and agreements have the same evidential value of their respective originals, unless the person to whom they are presented requests the display of their original version;

(ii) the signature of scanned copies of acts and agreements by hand or by qualified electronic signature does not affect their validity, even if different kinds of signature coexist in the same act or agreement.

MEASURES RELATED TO LEASES

Within the context of the legal framework aimed at mitigating the economic and social impact of the measures to address the COVID-19 pandemic, Law no. 1-A/2020, of 19 March ("**Law 1-A/2020**") established extraordinary and temporary measures to protect the tenants. Please see the section below on **Impact on urban lease agreements and other forms of exploitation of real-estate**.

EXCEPTIONAL AND PROVISIONAL FRAMEWORK OF COMMERCIAL PRACTICES WITH PRICE REDUCTION

In the context of the gradual lifting of the measures issued in order to contain the pandemic, Decree-Law no. 20-E/2020, of 12 May ("**Decree-Law 20-E/2020**") establishes an exceptional and provisional framework for commercial practices with price reductions. This framework aims, on the one hand, at allowing commercial establishments that have remained closed or whose activity has been suspended to quickly sell the products accumulated during this period, and, on the other hand, at boosting their economic activity.

Thus, articles 3 and 4 of Decree-Law 20-E/2020 have temporarily modified the clearance sales framework set forth in article 10 of Decree-Law no. 70/2007, of 26 March, establishing that: (i) clearance sales which take place during the months of May and June of 2020 will not be counted for the purposes of the maximum limit of 124 days of clearance sales per year; and (ii) the economic operator who intends to carry out a clearance sale during the months of May and June of 2020 is exempt from issuing the respective declaration addressed to the Economic and Food Security Authority (*Autoridade de Segurança Alimentar e Económica*).

IMPACT ON THE DEADLINES FOR THE EXERCISE OF RIGHTS FORESEEN IN THE LEGAL FRAMEWORK ON THE WARRANTIES APPLYING TO THE SALE OF CONSUMER GOODS

Article 18-A of Decree-Law 10-A/2020 establishes that the deadlines for the exercise of rights foreseen in article 5-A of Decree-Law no. 67/2003, of 8 April (which sets forth the legal framework on the warranties applying to the sale of consumer goods) which expire between 18 March 2020 and 31 May 2020 are extended until 30 June 2020.

The rights mentioned in article 5-A of Decree-Law no. 67/2003, of 8 April, are the rights of the consumer to demand the repair or replacement of the non-conforming consumer goods acquired by him/her, as well as the rights to claim a price reduction or to terminate the sale and purchase agreement.

Article 18-A of Decree-Law 18-A/2020 is however not entirely clear as to which deadlines are extended until 30 June 2020. In particular, it is not clear if:

i. the only deadlines that are extended are the end dates of the consumer good warranty periods set forth by article 5(1) of Decree-Law no. 67/2003, of 8 April (to which article 5-A(1) of Decree-Law no. 67/2003, of 8 April refers), such warranty periods being of two or five years counting from the delivery of the consumer good, depending on whether the good is a movable asset or real estate, respectively;

ii. the only deadlines that are extended are the ones that apply to the consumer's obligation to denounce the lack of conformity of the consumer good (being two months or one year counting from the date in which the lack of conformity was detected, depending on whether the good is a movable asset or real estate, respectively) and the deadlines for the consumer to effectively enforce its rights, after denouncing the lack of conformity (two years or three years counting from the moment in which the lack of conformity is denounced, depending on whether the consumer good is a movable asset or real estate, respectively); or

iii. all deadlines and periods mentioned in i. and ii. are extended.

Considering that the intention behind the extension appears to be to ensure that consumers will remain able to effectively exercise their rights, and considering also that article 18-A of Decree-Law 10-A/2020 makes mention, without distinction and without making reference to specific paragraphs or provisions to all deadlines of article 5-A of Decree-Law no. 67/2003, of 8 April, our view is that all deadlines and periods mentioned in i. and ii. are extended until 30 June 2020. However, this interpretation is debatable.

Corporate law matters

The legal framework to address the COVID-19 outbreak includes some measures related to corporate law, mainly aimed at promoting the holding of company corporate body meetings through electronic means and granting more flexibility for companies to approve their annual accounts, by extending the deadlines applicable for this purpose.

MEASURES RELATED TO CORPORATE BODIES' MEETINGS

- **Promotion of meetings through electronic means**

  Pursuant to article 5(1) of Law 1-A/2020, the participation in meetings through electronic means (notably by video or by teleconferencing) of members of corporate bodies of both public and private entities (particularly companies) will not inhibit the regular functioning of the corporate body, in particular, with regard to the quorum and voting requirements.

  This provision sets out that the respective minutes of the meetings must record the attendance of the relevant members of the corporate body by electronic means.

  In this regard, this article applies among others to:

  i. General shareholders' meetings: in accordance with article 377(6)(b) of the Portuguese Commercial Companies Code ("**PCCC**") (which is not only applicable to limited liability companies by shares (*sociedades anónimas*), but also to limited liability companies by *quotas* (*sociedades por quotas*) through article 248(1) of the PCCC), general shareholders' meetings may be held, except where otherwise established by the articles of association, by electronic means, in which case the company must ensure the authenticity of the statements from the shareholders, that there are no risks to the communications and record the content of each meeting and the participating members.

     The main purpose of article 5(1) of Law 1-A/2020 is to encourage meetings through other means besides physical attendance, in accordance with the measures that have come into force as a result of the COVID-19 outbreak.

However, since the PCCC already permits, except where otherwise set out in the articles of association, for general shareholders' meetings to take place through electronic means (as long as the abovementioned requirements are met), apparently, this article should be interpreted to mean that the use of electronic means is permitted even when the articles of association prohibit it, during the period in which this Law is in force, as otherwise this provision would have a very limited scope.

Moreover, it does not seem that the aim of the legislator is to exempt companies from complying with the requirements of authenticity, security and recording of the meetings as set out in article 377(6)(b) of the PCCC, and therefore these requirements are still applicable to the meetings attended through electronic means, during the period in which Law 1-A/2020 is in force.

ii. Board of directors' meetings: since article 410(8) of the PCCC contains an identical rule to article 377(6)(b) of the PCCC, the observations made above are also applicable to board of directors' meetings, however, with the necessary adjustments.

Considering the current situation and the various restrictions in force (in particular, restrictions on movement, duties of confinement and also the closure of premises and establishments and the prohibition on holding events with more than 10 persons – which, in itself, would make it impossible to hold physical general shareholders' meetings of public companies), this rule aims to promote and regularise the normal operation and function of the companies.

On 20 March 2020, the Portuguese Securities and Exchange Market Commission (*Comissão do Mercado de Valores Mobiliários*) ("**CMVM**"), the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate* Governance) and the Association of Listed Companies (*Associação de Empresas Emitentes de Valores Cotados em Mercado*), issued joint guidelines regarding the holding of general shareholders' meetings, focusing particularly on alternative ways to hold shareholders' meetings, in order to balance enabling shareholders to exercise their rights with the safety, health and well-being of all those involved.

In short, the recommendations are the following:

i. Holding general shareholders' meetings by electronic means, while allowing the participation through these means, even if it is not specifically referred to in the notice to convene the meeting, as would be the case in normal circumstances. Nonetheless, this must be communicated to the shareholders, before the meeting is due to commence by the same means used to issue notice of the meeting.

ii. A combination of in-person and off-site attendance, if a full use of electronic means is not feasible, provided that the measures to implement the state of emergency do not prohibit it. For example, the recommendations refer to (*a*) partial recourse to electronic and interactive means of communication, such as videoconferencing, allowing interactivity between the participants in the meeting through remote means of communication and (*b*) the promotion of digital transmission and remote viewing means, such as webcast, or the provision of decentralised sites with video access to the meeting, therefore allowing shareholders to make their representations or postal vote as well as participating in the discussion at the general shareholders' meeting. It is also clarified that these possibilities do not limit the admissibility of other forms of participation and ways of holding general shareholders' meetings, provided that they are accepted and permitted by the chairman of the board of the general shareholders' meeting and communicated in the same form of notice to convene the meeting, in reasonable time in advance of the date of the general shareholders' meeting.

iii. Providing the information that needs to be made available before a general shareholders' meeting exclusively on the company's website and, when applicable, on the CMVM Information Disclosure System (*Sistema de Difusão de Informação*), in order to minimise the journeys to and from the company's registered office for the purpose of obtaining this information.

iv. The exercise of voting rights, as well as the exercise of information rights and other relevant communications in this context, must be carried out by email, in order to avoid the risks of contagion by COVID-19 and possible delays that are inherent to postal communications.

v. The chairman of the board of the general shareholders' meeting shall be given the means to identify the shareholders that are present at a shareholders' meeting that effectively provide a high level of certainty and security to the reliability of such records (attendance lists). It is recommended that the means used by the chairman be specified in the notice to convene the meeting, should any additional procedures need to be complied with by shareholders.

MEASURES RELATED TO THE ANNUAL GENERAL SHAREHOLDERS' MEETINGS AND OTHER MANDATORY GENERAL SHAREHOLDERS' MEETINGS

- **Extension of the deadline for holding mandatory general shareholders' meetings**

  In accordance with article 18 of Decree-Law 10-A/2020, all general shareholder's meetings of companies that need to take place pursuant to law or the company's articles of association may be postponed until 30 June 2020.

  Although this decree-law does not expressly refer to annual general shareholders' meetings (in which, in particular, the annual accounts are approved), this deadline extension includes these meetings, which, as a general rule, and pursuant to article 65 of the PCCC, must take place annually by 31 March or, in the case of companies that must file consolidated accounts (*contas consolidadas*) or that apply the equity method of accounting (*método da equivalência patrimonial*) by 31 May.

  This measure also applies to mandatory general meetings of associations and cooperatives.

  In addition, for the specific case of associations and cooperatives with more than 100 members, article 18(2) of Decree-Law 10-A/2020 states that general meetings that need to take place pursuant to their respective articles of association may be postponed until 30 September 2020 (instead of 30 June 2020).

  On 28 April, the CMVM issued a communication (Communication to Venture Capital Entities regarding the Deadline for General Meetings), in which it made public its understanding that the abovementioned measure also applies to annual meetings of unit holders in venture capital funds.

In this Communication, the CMVM also recommended venture capital entities to comply with the Recommendations referred to above in the context of annual meetings of unit holders.

Impact on urban lease agreements and other forms of exploitation of real estate

Within the context of the legal framework aimed at mitigating the economic and social impact of the measures to address the COVID-19 pandemic, extraordinary and temporary measures have been approved concerning housing and non-housing lease agreements, as well as other contractual forms of real estate exploitation. This extraordinary framework applies to rent payments that fall due on or after 1 April 2020.

SUSPENSION OF EFFECTS

Under the scope of the measures implemented to protect tenants, particularly to ensure the stability of households, articles-6-A(6) and 8 of Law 1-A/2020, as amended by Law 4-A/2020, of 6 April ("**Law 4-A/2020**"), by Law no. 14/2020, of 9 May, and by Law no. 16/2020, of 29 May ("**Law 16/2020**"), impose the suspension of:

(i) eviction procedures, special eviction procedures and proceedings for the delivery of the leased real-estate, when the tenant, by virtue of a final judicial decision to be rendered, may be placed in a state of vulnerability due to a lack of housing or another imperative social reason;

(ii) the effects of unilateral termination (*denúncia*), revocation or opposition to the renewal of housing and non-housing lease agreements by landlords;

(iii) the expiration (*caducidade*) of housing and non-housing lease agreements, unless the tenant does not oppose the termination;

(iv) the deadline established in article 1053 of the Portuguese Civil Code relating to the delivery of the real-estate that is the object of the expired lease agreement, if the expiration of the deadline occurs during the period of time in which the measures are in force;

(v) of the enforcement of a mortgage on a real estate that is permanently owner-occupied by the mortgagor.

The suspension will remain in force until 30 September 2020.

DEFERRED PAYMENT OF RENT

- **Housing lease**

  – **Loss of income**

  As a consequence of the implementation of exceptional containment measures in connection with the COVID-19 pandemic, tenants who become unable to pay rent may benefit from the suspension of rent payments that fall due starting 1 April 2020 and during the months in which the state of emergency remained in force (including the first month after it is lifted).

  According to Law no. 4-C/2020, of 6 April ("**Law 4-C/2020**"), as amended by Law 17/2020, of 29 May, the implementation of the benefit requires a written notice by the tenant to the landlord (i) provided no later than five days before the first rent payment regarding which they intend to benefit from the special regime falls due (or up to 20 days after the entry in force of Law 4-C/2020, if the rent must be paid on or before 1 April 2020), (ii) informing the landlord that the tenant intends to benefit from the referred regime, and (iii) accompanied by documentation providing the loss of income in that period of time.

  Loss of income is deemed proved in accordance with Ministerial Order no. 91/2020 of 14 April approved by Ministry for Infrastructures and Housing ("**Order 91/2020**"), in connection with the **housing tenants** (article 3 of the referred Law) when:

(i) they lose more than 20% of the their household income in the month the loss of income occurs as compared to that household's income in the preceding month or in the same month of the previous year[3]; and

(ii) the tenants' "household effort rate", calculated as a percentage of the income of all members of the household allocated to the payment of rent, is or exceeds 35%.

For the purpose of Law 4-C/2020, housing tenants are (i) tenants who lease real estate as their main residence (which is presumed, under article 3 of Order 91/2020, to be their residence for tax purposes), (ii) students who lease a real estate to attend education activities that are a minimum of 50 km away from their main residence; and (iii) guarantors of students who have no paid work.

The loss of income of **housing landlords** is determined by:

(i) a loss of more than 20% of the landlord's household income in the month the loss of income occurs, compared to that household's income in the preceding month or in the same month of the previous year[4];

(ii) that proportion of loss of income is caused by its tenants not paying in accordance with Law 4-C/2020; and

(iii) the household's remaining available income is reduced below the social support index (*indexante dos apoios sociais*, "**IAS**").

The loss of income by housing tenants and landlords[5] is proven with the following documents:

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[3] Applicable to household income from business or professional (category B of the Income Tax Code) activities or when the loss of the taxable amount payable in the preceding month does not accurately reflect the loss of income.

[4] Applicable to household income from business or professional (category B of the Income Tax Code) activities or when the loss of the taxable amount payable in the preceding month does not accurately reflect the loss of income.

[5] For the purposes of Order 91/2020, the household of housing tenants and landlords is determined by reference to article 13 (4) and (5) of the Personal Income Tax Code.

(i) **employees** – pay slips or a statement from their employer setting out the monthly gross income amount;

(ii) **Income Tax Code category B or self-employed workers** – receipts or invoices issued according to law, which sets out the amount of income before VAT;

(iii) pensions, real estate income, social benefit, housing grants or other regular forms of income – documents issued by the paying entities or other documents that provide proof of these payments, or, whenever the documents that provide proof of payment cannot be obtained immediately, if self-employed workers under an organised accounting system, statements of honour signed by the beneficiary or their certified accountant, conditional upon them being provided as soon as possible.

– **Financial support**

The Institute of Housing and Urban Renewal, I.P. ("**IHUR**") may, under article 5 of Law 4-C/2020, provide financial support, by way of interest-free loans, for the payment of rent falling due between 1 April 2020 and 1 September 2020, both inclusive, in the following situations:

(i) **to tenants** who (a) suffer a proven loss of income and (b) are unable to pay rent for their main residence:

- financial support to pay for the difference between the value of the monthly rent due and the value resulting from applying a "maximum effort rate" of 35% to the household's income (the household's remaining available income cannot be lower than the IAS;
- this financial support does not apply to housing lease agreements that are subject to special lease or rent regimes (i.e. supported leases, supported rent and social rent), whose loss of income entails a reduction in the rent.

(ii) **to landlords** (a) who suffer a proven loss of income, (b) whose tenants do not resort to IHUR's for financial support, and (c) whose household's remaining available income falls below IAS as a result:

- financial support to compensate for the monthly rent that is due but unpaid.

The terms and conditions of these loans are available on the Portal da Habitação.

– **General provisions**

Due to the constraints caused by the COVID-19 pandemic, Order 91/2020 (article 8) recommends using email as a main method of communication between tenants, landlords and the IHUR.

Also worth noting are the sanctions imposed by Law 4-C/2020 and Order 91/2020 on those who submit or sign documents that include fraudulent misrepresentations when applying for financial support or rent-payment deferrals. In addition to damages and compensation, the offender may be subject to other liability (such as criminal liability).

- **Non-housing leases and other contractual forms of commercial exploitation of real estate**

Pursuant to Law 4-C/2020 (articles 7 and 8), non-housing tenants and entities using real estate for commercial purposes under other contractual forms may also postpone the payment of rent that falls due during the months in which the state of emergency is in force and the first month thereafter as well as during the months in which other measures imposing the closure or suspension of activities are in force, and the first month thereafter, provided that such rents do not fall due later than 1 September 2020.

This exceptional regime only applies to:

(i) establishments open to the public, including retail establishments and those that provide services, but (a) that were closed or (b) which activities were suspended, each of (a) or (b) as a result of, and for the execution of, the declaration of the state of emergency, or due to legislative or administrative measures implemented, including those measures approved in connection with the COVID-19 pandemic after the state of emergency ended, even if those establishments continue to perform their activities by way of e-commerce, services at a distance or through an electronic platform; and

(ii) restaurants and similar establishments closed due to such legislative or administrative measures, even if they continue to perform their activities but exclusively for consumption

outside the establishment or for home delivery, in accordance with Decree of the Council of Ministers 2-A/2020[6], or any other provision that allows it.

- **Public entities**

  Pursuant to article 11 of Law, public entities holding real estate that is leased or assigned under any other contractual form may also, during the term of Law 4-C/2020:

  (i) reduce the rent of tenants who have proven loss of income under the terms established for residential tenants (unless they benefit from a special residential lease agreement or rent regime, such as supported leases, supported rent or social rent);

  (ii) exempt tenants from paying of rent if the they prove that they have no income after 1 March 2020; and

  (iii) grant moratoria to their tenants.

  This framework applies to the payment of rent falling due between 1 April 2020 and 1 September 2020, both inclusive.

- **Rent payment**

  Once of the state of emergency related to the COVID-19 pandemic ends, residential and non-residential tenants, as well as entities exploiting real estate for commercial purposes under other contractual forms, will have to pay landlords the deferred rent.

  Under articles 4 and 9 of Law 4-C/2020, the deferred rent must be paid:

– **Housing lease**

[6] Considering that the Decree of the Council of Ministers 2-A/2020 was revoked by the Decree of the Council of Ministers 2-B/2020 and that the latter was revoked and replaced by Decree of the Council of Ministers 2-C/2020, we take the view that the legal references made to Decree of the Council of Ministers 2-A/2020 and Decree of the Council of Ministers 2-B/2020 should be understood as being made to the Decree of the Council of Ministers 2-C/2020.

(i) in monthly instalments;

(ii) within 12 months counting from the end of the first month following the expiry of the state of emergency;

(iii) in instalments that are not lower than one-twelfth of the total amount to be paid;

(iv) together with the rent that falls due each month;

– **Non-housing lease**

(i) Rent payments falling due during the months in which the state of emergency remained in force (and the first month thereafter) (in case no measures imposing a closure or suspension of activity were enacted subsequent to the termination of the state of emergency):

(a) in monthly instalments;

(b) within 12 months counted from the end of the first month following the term of the state of emergency;

(c) in instalments that are not less than one-twelfth of the total amount to be paid;

(d) together with the rent falling due each month;

(ii) Rent payments that fall due during the months in which the state of emergency remained in force (and the first month thereafter) and during any additional period of closure or suspension of activities determined by legislative provision or administrative measures enacted after the end of the state of emergency, and the first month after the end of effectiveness of such provision or such measures, provided such rents fall due in such period and not later than 1 September 2020:

(a) in monthly instalments to be paid as from the end of the first month following the end of the effectiveness of the legal provision or the measures that determined the closure or suspension or activities, or as from 1 September 2020, whichever occurs first;

(b) together with the rent falling due each month;

(c) until, at latest, June 2021;

(d) the monthly payment shall correspond to the debt amount divided by the number of months available for the repayment (taking (c) into account).

For this reason, Law 4-C/2020 does not entitle landlords to the remedies of compensation and refusal to accept other rents that are due (established in article 1041(1) and(3) of the Portuguese Civil Code) in the case of delay in the payment of rents falling due after 1 April when rent deferral is made under Law 4-C/2020.

TERMINATION OF THE AGREEMENT

- **Housing lease**

  Landlords are not entitled to terminate a housing lease on the basis of the lack of payment of rent that fell due during the months in which the state of emergency was in force, or in the month immediately following that in which it ended, if the tenant has claimed (and proved) a loss of income and has benefited from the suspension regime applicable to rent payments.

  The termination of the agreement may nevertheless occur at the landlord's initiative following the end of both the state of emergency and the exceptional regime established by Law 4-C/2020 if the tenant does not pay the rent in accordance with the abovementioned terms and conditions.

- **Non-housing leases and other contractual forms for the commercial exploitation of real estate**

  Aimed at protecting non-housing tenants and entities exploiting real estate for commercial purposes under other contractual forms, the measures established by Law 1-A/2020 (as amended by Law no. 14/2020, of 9 May) (article 8) as well as Law 4-C/2020 (article 9), as amended by Law 17/2020, of 29 May, prohibit:

  (i) the termination (i.e. resolution, unilateral termination (*denúncia*) or any other cessation) of the agreement due to the closure of the leased premises, when occurring as a result of a legal or administrative measure approved in the context of the COVID-19 outbreak;

  (ii) the termination (i.e. resolution, unilateral termination (*denúncia*) or any other cessation) of the agreement due to a delay in the payment of rent falling due (a) while the state of

emergency was in force and for one month after it ends and (b) regarding leased premises that remain closed due to legislative or administrative measures approved in connection with the COVID-19 pandemic, during the months in which those legislative or administrative measures applied or in the first month thereafter, until 1 September 2020, if the delay was caused by loss of the tenant's income and the rent is deferred in accordance with Law 4-C/2020; and

(iii) evictions from the premises where the above establishments are located.

- **General provisions**

  If the termination of the lease agreement results from the tenant's initiative, the tenant is obliged, as from the termination of the lease, to immediately pay the landlord, all rent falling within the scope of the exceptional regime.

Impact on registries and notaries

Several extraordinary measures have also been implemented to ensure there will be continued access to registry and notary services, in order to support the Portuguese economy.

CUSTOMER SERVICES

Several public services, such as registry offices, that were closed or that remained open with severe restrictions in place according to the measures imposed by the Decrees of the Council of Ministers, have reopened and resumed face-to-face services by prior appointment (article 16 of the Resolution of the Council of Ministers 40-A/2020). Services operating in "Lojas do Cidadão" in the Lisbon Metropolitan Area are the exception and will remain closed but able to accept appointment for face-to-face services starting on 15 June. Face-to-face services will remain, by appointment only, solely in the places which lack decentralised services.

The reopening of the notaries and registry offices for the provision of face-to-face services imposes an obligation on the persons or entities responsible for these services to adopt the health and hygiene measures set out under the Resolution of the Council of Ministers 40-A/2020, and Decree-Law 10-A/2020, as well as under **Dispatch no. 3301-C/2020** of 15 March. These resolutions implemented measures in relation to the organisation, operation and attendance of public services to be in force also during the state of calamity, in particular, under the following rules:

(i) **capacity limitations** (to ensure social distancing);

(ii) **the mandatory use of personal protection equipment and the individual sanitisation of the employees, clients and the facilities** (including the use of face masks, protective visors, skin disinfectant solutions);

(iii) **mandatory face-to-face services** on **appointment basis only**, limited to services that cannot be provided electronically and to urgent procedures; appointments for public services can be requested on the Portal ePortugal, by telephone or other digital public services, or on the relevant public authority's website;

(iv) **restrictions to the operation hours and attendance**;

(v) **priority attendance** for health care providers, special security services, protection and emergency forces staff, armed forces and social support services staff;

(vi) **reinforcement of digital services and remote procedures** (services for information purposes will be provided exclusively by telephone and online; there is a preference for payments to be made by electronic means; using the digital services currently available and the Digital Mobile Key (CMD) is encouraged).

REMOTE PROCEDURES

Within the scope of the established rules, Decree-Law no. 16/2020 of 15 April ("**Decree-Law 16/2020**") implements the exceptional and temporary measures designed to allow registration procedures to be carried out remotely, among which the following are highlighted:

- **General provisions: Civil, Vehicles, Commercial and Land Registries**

  (i) registration requests that cannot be made online and oppositions against decisions refusing registration may be submitted by email (through the addresses of the respective public services available on the IRN website);

  (ii) registration requests may be signed electronically, using the citizen card, the CMD or any other form of qualified digital signature;

  (iii) registration fees must be paid prior to submitting the registration requests, and proof of payment must be attached to the requests;

  (iv) registration fees must be paid by means of the available electronic means (including the payment references to be made available by the registration service) and, exceptionally, they may be paid by cheque (issued by a bank operating in Portugal) or postal order;

  (v) the procedures to overcome any deficiencies in registration requests made online or under Decree-Law 16/2020 are exempt from fees;

(vi) the procedures to issue Professional Attributes Certification Systems ("**SCAP**") to directors and board secretaries of commercial companies or civil companies in commercial form are exempt from fees;

(vii) registration requests received by electronic means are recorded in the ledger, following proof of payment of the registration fees, before the submission of the requests by post;

(viii) documents evidencing data held by the public authorities to assess registration requests may be dismissed;

(ix) the original documents in paper format may be sent digitally, by (i) entities legally authorised to certify photocopies (lawyers, solicitors, notaries) and by (ii) directors and board secretaries of commercial companies or civil companies in commercial form, in procedures in which they act and affix their qualified digital signature (with a citizen card, CMD or SCAP).

- **Vehicles Registry**

(i) vehicle ownership acquired by means of a verbal sale and purchase agreement can be registered by the seller or purchaser by sending a signed form by post to the registry office, provided that the other party has previously submitted the online sale/acquisition form;

(ii) the vehicle registration certificate is not required when the registration request is sent by post.

- **Civil Registry**

(i) birth certificate relating to a decision that authorises said registry or grants Portuguese citizenship may be made by declaration sent by email, with the pre-approved message or form made available on the IRN's website, to the registry office where the application for citizenship is pending, with record being made of the fact that the entry was made electronically;

(ii) the email message from the registry office confirming the birth certificate entry is a preparatory document for citizenship applications;

(iii) the death of any individual in Portuguese territory must be declared by email by means of a pre-approved optional message available on the IRN's website, together with the attachments also available on the same site;

(iv) upon completing the procedures, the registry office must send an email to the applicant attaching a copy of the birth or death certificate.

- **Commercial Registry**

(i) the registration of the incorporation of companies, share capital increases and reductions and the appointment of directors are considered urgent matters;

(ii) directors and board secretaries of commercial companies or civil companies in commercial form may certify the conformity of the electronic documents they submit online with the original documents where they intervene.

Decree-Law no. 16/2020 entered into force on 16 April and will be in force until 30 June 2020.

NOTARIES

Along with other public services, notary offices (in particular those that ceased operation during the state of emergency) are allowed to open to the public and to provide their services with the restrictions imposed under the state of calamity.

Following the above and as approved by the relevant notaries' association, Notaries are bound to provide their services using the resources they have available (e.g. telephone and email). They can also continue to provide face-to-face services, as long as this is on an appointment basis and all the guidelines of the Health Directorate-General (*Direção-Geral da Saúde*), in particular regarding the hygiene and safety of Notaries, their employees and the public, are fulfilled.

Information on visiting notary's offices during the state of calamity is available at Ordem dos Notários.

Employment and social security law matters

In the context of the pandemic caused by the outbreak of the COVID-19 disease, several exceptional measures to contain the spread of the virus have been adopted, many of which are having a huge impact on employment and labour relations, economic activity, daily life and the disposable income of employees and their families.

In this context, extraordinary measures have been approved to protect employment and family income.

PROTECTION MEASURES FOR EMPLOYEES

- **Prophylactic isolation and illness**

  Pursuant to Decree-Law 10-A/2020, if beneficiaries of the general social security scheme are prohibited from working owing to an order from a competent health authority to go into prophylactic isolation to reduce the spread of COVID-19 (commonly referred to as "going into quarantine"), this situation will be treated as an illness for employment and social security purposes.

  An employee who has received a prophylactic isolation notification from the health authorities is entitled (i) for the first 14 days, to an allowance equivalent to sick pay, for an amount corresponding to 100% of his/her reference salary; and (ii) thereafter (although, as a rule, prophylactic isolation will not exceed 14 days), sick pay equal to between 55% and 75% of the reference salary as follows:

  i. 55% for the period of temporary incapacity of 30 days or less;

  ii. 60% for the period of temporary incapacity of more than 30 days but no more than 90 days;

  iii. 70% for the period of temporary incapacity of more than 90 days but no more than 365 days;

iv. 75% for the period of temporary incapacity of more than 365 days.

This sick pay is not subject to a waiting period or the employee having made social security contributions for a minimum period of time (*período de garantia*) or having worked for a minimum number of days (*índice de profissionalidade*).

The prophylactic isolation notification can only be issued by a health delegate, i.e. a medical practitioner who is authorised to order this type of measure to safeguard public health.

The employee must send the notification to his/her employer, which must forward it to the Social Security within five days of receiving it. To this end, the employer must complete form **GIT71-DGSS** (which is available on the Social Security's website) with the employee's identification details.

If the employee is able to work remotely, or attend distance training programmes, the prophylactic isolation will not be treated as an illness (pursuant to Order 2875/2020 of 3 March), and the employee will receive his/her usual salary, paid by the employer.

If an employee is infected with COVID-19 and has a certificate of temporary incapacity for work (commonly known as a "sick note"), he/she is entitled to sick pay as explained above (i.e. between 55% and 75% of the reference salary), paid by the Social Security. If a person who has been ordered to go into prophylactic isolation subsequently becomes ill and a temporary incapacity certificate is issued, the prophylactic isolation notification ceases to apply and the general rules on sick leave and sickness allowance will apply.

- **Absences to care for children and grandchildren with COVID-19 or in isolation**

If an employee has to be absent from work to care for a child or grandchild because they have become infected with COVID-19 or have been ordered by the health authorities to isolate (for 14 days), the absence is considered justified and he/she is entitled to receive the corresponding childcare allowance, subject to the limits provided for by law.

As of the entry into force of the National Budget for 2020 (on 1 April 2020), the daily childcare allowance corresponds to 100% of the reference salary for parents, and to 65% for grandparents.

Employees can apply for this allowance directly through the official online platform *Segurança Social Direta*, submitting with the application a copy of the prophylactic isolation notification issued by the health authorities for the child or grandchild. When the child or grandchild is ill, the competent health authorities will notify the Social Security that the child or grandchild has been issued with a certificate of temporary incapacity. The password needed to access *Segurança Social Direta* can be requested on the Social Security's website.

- **Closure of educational establishments: exceptional assistance for families**

  – **School periods**

Pursuant to Decree-Law 10-A/2020, absences from work to care for children under the age of 12 (or older in the case of children who are disabled or have a chronic disease) owing to the closure of educational establishments are considered justified (when the employee cannot telework).

In these cases, employees will be entitled to two-thirds of their base salary. This support will be assumed in equal shares by the employer and the Social Security (i.e. approximately 33% of the base salary by the employer and approximately 33% by the Social Security) and subject to a minimum payment of the national minimum wage (EUR 635 for mainland Portugal) and a maximum of three times the national minimum wage (EUR 1,905).

Pursuant to Order 94-A/2020 of 16 April, for the purposes of this support, the base salary will be the one declared in March 2020 (related to the remuneration paid in February 2020) or, in the absence thereof, the national minimum wage.

The employer will pay its employee the full two-thirds of the base salary to which he/she is entitled and must declare it to the Social Security in a separate payroll statement. The Social Security will then reimburse the employer for its share of the support (i.e. approximately 33% of the base salary).

To receive this support, the employee must provide the employer with a completed form (**GF88-DGSS**), which can be downloaded from the Social Security's website. The employer must collect

the forms from its employees and fill-in the online form that is available on the company's *Segurança Social Direta*.

The part corresponding to the payments made to employees during May and June should be requested between the following dates: (i) 1 June and 10 June, for the financial support for May; and (ii) 1 July and 10 July, for the financial support for June.

This payment is subject to the standard employee social security contribution (11%; which shall be withheld and deducted by the employer), and 50% of the employer's standard social security contribution that it pays over the benefit paid to the employee. This means that the employer will only bear the social security contributions (at a 23.75% rate) for the part of the payment it is responsible for.

Only one parent (per family) can claim this financial support and it will only be granted once (i.e. regardless of the number of children the parent has to care for)[7].

This financial support will not be paid during school holidays.

If the employee's children are aged 12 or over, absence from work is only justified if the children are disabled or have a chronic illness.

Note: Decree-Law no. 14-G/2020, of 13 April, imposed an exceptional regime regarding the school calendar, according to which the third school term of school year 2019-20 will end on 26 June 2020. Therefore, from this date, the benefits approved under the exceptional assistance regime for families will no longer apply.

Although nursery schools re-opened on 18 May 2020, employees may have continued to benefit from the family support measure until 1 June 2020. From this date, there will be no exceptional

[7] Although the law does not preclude an employee from claiming this payment if his/her spouse is teleworking from home, according to the official information on the Social Security's website, as well as declarations made by the Ministry of Labour and Social Security, the other parent is not entitled to this payment.

assistance for families regarding children enrolled in nursery and pre-school years (which reopened on 1 June 2020).

– **School holiday periods**

During school holidays[8], absences from work so that employees can look after their children or other dependants under 12 years of age or those of any age who have a disability or chronic illness, as well as grandchildren who live with employees, form part of their household and who are children of teenagers under 16 years of age, are considered to be justified.

These absences shall not entail the loss of any rights, except for salary.

Alternatively, employees may take annual leave without the need to request their employer's approval if they give two days' written notice in advance of the start of their time off. In this case, employees will be entitled to their salary during their time off. However, article 264(3) of the Portuguese Labour Code shall not apply, which means that the holiday allowance may be paid in full up to the fourth month following the start of the period of holidays.

Nonetheless, this option does not apply to employees who provide essential services (e.g. healthcare professionals, security and rescue forces and services, armed forces, employees in the essential public services sector, employees forming part of the management and maintenance of essential infrastructure, etc.).

- **Other family support situations**

Absences from work owing to the need to care for a spouse or a de facto partner (de facto union) or person in a joint economy, or a relative in a direct ascending line who is dependent on the employee and who attends welfare facilities that are closed down by the health authorities or by

[8] The school holiday periods are those set out in Annex II and Annex IV of Order 5754-A/2019 of 17 June. No more interruptions to educational and teaching activities are expected before the end of the third term of the current school year. However, under Order 181/2019 of 11 June, schools may decide, within certain limits, specific rules regarding the organisation of the school year. As a consequence, there may be occasional deviations from the dates indicated in Annex II of Order 5754-A/2019.

the Government, are considered justified if it is not possible to receive support through alternative means.

These absences shall not entail the loss of any rights, except for salary.

Alternatively, employees may schedule holidays as set out above in relation to school holiday periods.

- **Voluntary firefighters**

  Absences from work by employees of the private or social sector who are voluntary firefighters so that they can provide rescue or transport services owing to the COVID-19 pandemic, and who can prove that their assistance has been requested by the fire brigade, are considered justified. These absences do not lead to the loss of any rights, except for salary.

  For this purpose, the commander in chief of the respective fire department shall issue a written document, duly signed, certifying the days worked by the volunteer firefighter. Their salary will be paid by the National Emergency and Civil Protection Authority.

- **Exceptional protection regime for immunosuppressed and chronically ill patients**

  Under article 25-A of Decree-Law 10-A/2020[9], immunosuppressed and chronically ill patients who, according to the guidelines issued by the health authorities, are considered to be patients at risk, namely cardiovascular patients, persons with chronic respiratory disease, cancer patients and persons with kidney insufficiencies, may justify their absence from work by submitting a medical certificate to their employer, provided that they are unable to carry out their activity by remote working or by any other means.

  This exceptional regime is not applicable to employees who work in services considered to be essential.

[9] Added by article 3 of Decree-Law 20/2020.

RIGHTS AND DUTIES OF THE PARTIES TO AN EMPLOYMENT RELATIONSHIP

- **Contingency plan**

  Under article 34-B of Decree-Law 10-A/2020[10], companies must prepare a contingency plan that is appropriate for their workplaces and complies with the guidelines set out by the General Directorate of Health and the Labour Inspectorate.

  Therefore, as stated in Guidelines 006/2020 of the General Directorate of Health, the preparation of the contingency plan should be coordinated between the employer and the company's occupational health and safety service providers, employees and their representatives, and should answer three fundamental questions: (i) what effects could the infection of employees with COVID-19 have on the company?; (ii) how should the company prepare for one or more of its employees becoming infected with COVID-19?; and (iii) what should the company do if one of its employees is suspected of being infected with COVID-19?

  The contingency plan should be known by all employees and should make provision for, among other circumstances, the immediate isolation of an employee with symptoms, even before an adequate response is given by the health authorities.

  Guidelines 006/2020 of the General Directorate of Health set out the recommendations on prevention, control and monitoring procedures in companies, and we would advise checking them regularly as they are updated to reflect the changing circumstances both in Portugal and abroad.

  Additionally, on 28 April 2020, the Labour Inspectorate has published **19 recommendations** for employers in order to adapt the working place to protect their employees taking into account the COVID-19 pandemic.

[10] Added by article 3 of Decree-Law 20/2020.

- **Employee body temperature monitoring**

  According to article 13-C of Decree-Law 10-A/2020[11], employees' body temperature may be tested when they enter the workplace.

  This temperature control testing does not affect the individual's data protection rights. It is strictly forbidden to keep a record of an employee's body temperatures unless he/she expressly authorises the employer to do so.

  If an employee's body temperature is higher than normal, he/she may be denied access to the workplace.

- **Teleworking**

  In the context of the lifting of confinement measures, teleworking has ceased to be mandatory as of 1 June 2020[12] and the provisions of articles 165 to 171 of the Portuguese Labour Code are once again applicable. The main consequence of this amendment is the need for the employer to enter into a written agreement with each employee who is to be working remotely.

  Exceptionally, teleworking will remain compulsory when requested by the employee and the functions in question can be performed remotely, in the following situations:

  (a) employees covered by the exceptional protection regime for immunosuppressed and chronically ill patients, provided for in article 25-C of Decree-Law 10-A/2020, as amended, as long as a medical certificate is presented;

  (b) disabled employees with a degree of disability of at least 60%;

  (c) employees with children or other dependants under the age of 12 or, regardless of age, with a disability or chronic illness, and to whom they need to provide assistance as a result of the suspension of on-site teaching and non-teaching activities in educational establishments or the suspension of social facilities to support early childhood or situations

[11] Added by article 3 of Decree-Law 20/2020.

[12] At least until 14 June 2020, date on which the current extension of the state of calamity will terminate.

of disability outside the legally established school-holiday periods (this possibility applies only to one of the parents).

In the situations listed above, the employee may request to work remotely and the employer will be obliged to accept this request insofar as the functions in question are compatible with remote work.

On the other hand, it has also been established that teleworking will be compulsory when physical spaces and the organisation of work do not allow for the guidelines of the General Directorate of Health and the Working Conditions Authority on the matter (in particular, social distancing between employees and workstations) to be complied with. In these cases, either the employer or employee may unilaterally impose teleworking.

Outside these situations, teleworking must comply with the regime established by the Portuguese Labour Code.

In situations where teleworking cannot be adopted, measures to prevent and mitigate the risks arising from the pandemic may be implemented, respecting the limits on maximum working periods and the right to daily and weekly rest established by law or by an applicable collective bargaining agreement, including measures such as (i) the adoption of daily or weekly rotation schedules; (ii) staggered entry and exit times, (iii) different break and meal times.

- **Right to occupation: voluntary closure of a company**

The fact that COVID-19 has been classified as a worldwide pandemic, and that employers have a duty to offer their employees a healthy working environment, could be considered to justify the decision of employers to interrupt the performance of work – noting that article 129(1)(b) of the Portuguese Labour Code only prohibits employers from unjustifiably interrupting performance of work – and order their workplaces to be vacated (regardless of whether or not employees are able to telework).

In any event, we stress that this "optional quarantine" or "contingency measure" adopted voluntarily by an employer – i.e. one which is not ordered by the health authorities – does not

affect salaries, which must be paid in full by the employer, notwithstanding the possibility of resourcing to the suspension of employment agreements (lay-offs).

- **Scheduling of holidays by the employer**

  Preferably, holidays should be agreed between the employer and the employee. In the absence of an agreement, the employer may unilaterally schedule an employee's holiday, after consulting the works council, the inter-trade union committee or the union committee representing the employee in question (if any).

  In small, medium and large companies, the employer may unilaterally schedule the holiday period, but only for dates between 1 May and 31 October (unless the collective bargaining agreement allows for a different period).

  In the tourism sector, the employer must ensure that 25% of an employee's holiday is taken during the abovementioned period.

  If holidays are already scheduled, an employer's options to change the agreed dates are very limited and the employee must be compensated for the inconvenience caused by the rescheduling.

PROTECTION MEASURES FOR SELF-EMPLOYED PERSONS

- **Subsidy for prophylactic isolation**

  When in prophylactic isolation, self-employed persons are entitled to the same protection as employees and there is no difference in the way in which the payment they are to receive is calculated. In other words, during the 14 days of prophylactic isolation, they will receive an allowance corresponding to 100% of their reference income.

  Form **GIT71-DGSS**, available on the Social Security's website, should be filled-in by the self-employed person. The form and the prophylactic isolation notification should be sent to the Social Security through the *Segurança Social Direta* platform.

- **Exceptional financial support for families**

  Pursuant to Decree-Law 10-A/2020, exceptional financial support for families (referred to above in respect of the closure of educational establishments) is also available to self-employed persons, provided that they have fulfilled their social security contribution obligations for at least three consecutive months over the last 12, and they are unable to continue working (for example, through telework)[13].

  They are entitled to one third of their monthly contributory basis, based on their figures for the first quarter of 2020 and subject to a minimum amount of EUR 438.81 and a maximum amount of EUR 1,097.03.

  This financial support must be declared in their quarterly income statement, is subject to social security contributions and will be automatically authorised once the self-employed persons file an application using a form that is available on the *Segurança Social Direta* platform. This should be done on a monthly basis, on the following dates: (i) between 1 June and 10 June, for the support for May; and (ii) between 1 July and 10 July, for the support for June.

  As in the case of employees, this financial support cannot be received by both parents and is only granted once (i.e. regardless of the number of children).

- **Extraordinary support to offset the reduction in economic activity**

  Decree-Law 10-A/2020 (amended by Decree-Law no. 12-A/2020 of 6 April) also approved an extraordinary support measure to compensate for the reduction in self-employed persons' business activity and to allow for the deferral of social security contributions.

  This measure is only applicable to persons who are exclusively self-employed (i.e. it is not applicable to persons who are both employed and self-employed) and are not receiving any pension, who have been subject to social security contribution obligations for at least three

[13] See our comments above on the reopening of education establishments and the end date of the school term.

consecutive months or six interpolated ones in the last 12 and who are in one of the following situations:

i. His/her activity or sector is proven to have stopped during the COVID-19 outbreak[14] (in this case, the circumstance will be attested by a binding statement of the self-employed person or a statement issued by his/her certified accountant, if applicable); or

ii. He/she has experienced an abrupt and sharp drop of at least 40% of invoicing in the 30 days prior to the request to the Social Security, with reference to the average of the two months preceding such period or to the corresponding period of 2019 or, for companies which started their activity less than 12 months ago, the average of that period in which they have been active (in this case, a statement issued by the self-employed person together with a statement issued by his/her certified accountant will be needed).

The financial support is granted for a period of one month, which may be extended for further one-month periods up to a maximum of six months, and corresponds to:

a. the registered contribution base income with a maximum limit of EUR 438.81, in those cases where the amount of the registered contributory base is inferior to EUR 658.22;

b. two-thirds of the registered contributory base income, with a maximum limit of EUR 635, in those cases where the amount of the registered contributory base is equal to or higher than EUR 658.22.

When the support is grounded on the circumstances identified in point ii. above (i.e. a drop in invoicing), the amount of the support is multiplied by the percentage drop in invoicing. In any case, the maximum amount awarded is equivalent to 50% of the IAS[15] (i.e. EUR 219.41).

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[14] If the activity had been previously suspended or the business closed, the financial support will only be granted if business is resumed within eight days counted from the date in which the duty of suspension or closure ceases to exist.

[15] Social Aid Index (*Indexante de Apoios Sociais*).

The financial support is payable as from the month after the request is filed using the online form that is available on the *Segurança Social Direta* platform. The request must be submitted on a monthly basis, between the following dates: (i) 20 April and 4 May, for support corresponding to April; (ii) 20 May and 31 May, for support corresponding to May; and (iii) 20 June and 30 June, for support corresponding to June.

This support cannot be cumulated with the subsidies for prophylactic isolation, sickness and childcare assistance, nor with the exceptional financial support to families referred to above and does not entitle the self-employed person to any exemption from the payment of social security contributions.

Nevertheless, self-employed persons who receive this financial support are entitled to defer the payment of their social security contributions due in the months in which the support is paid. These deferred contributions must be paid as from the second month after this support stops, over a maximum period of 12 months, in equal and successive monthly instalments.

Note: The extraordinary support to offset the reduction in economic activity (and only this) may also be granted, subject to the necessary adaptations, to directors (*gerentes*) of companies and to members of the social bodies of foundations, associations and cooperatives with equivalent functions, provided that the aforementioned individuals are exclusively covered by the Social Security scheme in such capacities and perform their activity for only on entity which has registered less than EUR 80,000 in invoicing (proven through the *E-Fatura*) in the previous year.

- **Extraordinary support to encourage professional activity**

  An extraordinary measure was approved to encourage professional activity. This measure comes in the form of financial support for those who were exclusively covered by the self-employed persons scheme in March 2020 and who find themselves in one of the situations that would entitle them to receive the extraordinary support to offset the drop in business (points i. and ii. of the previous section) and who:

i. Have been working as a self-employed person for more than 12 months but do not meet all the requirements to be eligible for the extraordinary support to offset the drop in business[16];

ii. Have been in business for less than 12 months; or

iii. Are exempt from paying contributions as per article 157(1)(d) of the Social Security Code[17] (*Código dos Regimes Contributivos do Sistema Previdencial de Segurança Social*).

While this measure is in force, self-employed workers are eligible for the financial support for a period of one month, subject to monthly extensions, for up to a maximum of three months.

The financial support is capped at 50% of the IAS (i.e. EUR 219.41) and is calculated based on the relevant income determined in accordance with the Social Security Code and the invoicing reported for tax purposes between 1 March 2019 and 29 February 2020. Additionally, when the financial support is requested on the basis of a drop in invoicing, the amount of the support is multiplied by the percentage drop in invoicing.

Applying for this extraordinary support entails, as of the month following that in which the support ceases, the effectiveness of the self-employed workers regime or the termination of the exemption.

- **Socially vulnerable groups**

A measure for socially vulnerable groups was also recently approved. This measure takes the form of financial support. It is granted for a maximum period of two months, to those who are not

[16] Given that they have not been subject to social security contribution obligations for at least three consecutive months or six non-consecutive ones in the past 12 months.

[17] Cases where there is no income or the value of contributions due for the relevant income in 2019 is less than EUR 20.00.

covered by a national or foreign social security system and who notify the tax authorities of the start or resumption of their independent activity.

Receiving this support entails the effectiveness of the self-employed workers regime (for those cases where the self-employed person was not yet covered). The activity must continue for at least 24 months after the financial support ceases. If the activity ceases before this period, the amount received must be refunded.

The amount of the support corresponds to 50% of the IAS (i.e. EUR 219.41).

BUSINESS CRISIS SITUATION | EXCEPTIONAL MEASURES

Decree-Law no. 10-G/2020, of 26 March ("**Decree-Law 10-G/2020**")[18], provides for exceptional and temporary measures in response to the COVID-19 pandemic, defining and regulating the financial support available to employees and companies covered by said regimes (commonly known as simplified lay-off) and revokes Ministerial Order 71-A/2020, of 15 March 2020.

Eligible for these measures are companies of a private nature, including those in the social sector, affected by the COVID-19 outbreak and who are considered to be in a business crisis situation.

In order to avail of these measures, employers must have their tax and contributory situation regularised with the Tax and Customs Authority and the Social Security[19].

- **Business crisis situation**

  For the purposes of Decree-Law 10-G/2020 a business crisis situation is considered to consist of:

[18] Decree-Law 10-G/2020 has entered into force on 27 March 2020 and shall be in effect until 30 June 2020.

[19] Tax and contributory debts incurred in March 2020 were not included for these purposes until 30 April 2020.

i. **The total or partial closure of the company or establishment**, resulting from the duty to close as provided for in the Decree of the Council of Ministers 2-A/2020[20] or from legislative or administrative directions, under the terms provided for in Decree-Law 10-A/2020, or the General Civil Protection Law (*Lei de Bases da Proteção Civil*) as well as the General Health Law (*Lei de Bases da Saúde*), in relation to an establishment or company effectively closed and which covers the employees directly affected.

ii. **The total or partial stoppage of the company's or establishment's activity** resulting from the disruption of global supply chains, or from the suspension or cancellation of orders that can be proved with documentation (through documents that show the cancellation of orders or bookings, which prove that the utilisation of the affected company or establishment will be reduced by more than 40%, either in relation to its production or occupation capacity in the month following the request for the support); or

iii. **The abrupt and sharp drop of at least 40% of invoicing** in the 30 days prior to the request to the Social Security, with reference to the average of the two months preceding such period or to the corresponding period of 2019 or, for companies which started their activity less than 12 months ago, the average of that period in which they have been active.

The business crisis situation should be confirmed by a statement from the employer with s summary description of the crisis situation. Where the business crisis situation is grounded on items ii. and iii. above, the statement from the employer must be accompanied by a certificate from the company's certified accountant.

In the event of subsequent inspections by the public authorities, the following documents, attesting the business crisis situation, may be required: (i) balance sheet of the month in which the financial support is being requested, as well as the balance sheet of the corresponding month

[20] The Decree of the Council of Ministers 2-A/2020 was revoked, as was the Decree of the Council of Ministers 2-B/2020 and the Decree of the Council of Ministers 2-C/2020.

of 2019 or of previous months, when applicable; (ii) VAT statement for the month of the financial support, as well as the two immediately preceding months, or the statement for the last quarter of 2019 and the first quarter of 2020, depending on whether the applicant adopted the monthly or quarterly VAT regime respectively, which must demonstrate the intermittence or disruption of supply chains or the suspension or cancellation of orders; (iii) in order to prove the cancellation of orders (within the business crisis situation set out in item ii. above), the documents that show the cancellation of orders or bookings, which prove that the utilisation of the affected company or unit will be reduced by more than 40% of its production or occupation capacity in the month following the request for the support; and (iv) any additional evidence to be established by the Ministry of Labour and Social Security.

- **Simplified lay-off**

  One of the approved measures consists of an extraordinary support granted in cases of suspension of employment agreements or reduction or regular working hours (commonly known as the simplified lay-off). In these cases, an extraordinary support may be provided, in the terms described below, intended to cover the payment of wages.

  The simplified lay-off, in relation to the effects on salaries, follows the regime established in the Portuguese Labour Code for the normal lay-off procedure.

  Specifically, employees are ensured, during the period of application of the measure, a salary compensation (corresponding to two thirds of the employee's gross remuneration, up to a maximum of EUR 1,905.00) which is paid by the employer, being 70% of same supported by the Social Security in the following terms:

  i. Suspension of the employment agreement: the employee receives two thirds of his or her normal remuneration, though the amount received may not fall below the national minimum wage ("**NMW**") (EUR 635 for mainland Portugal) and may not exceed an amount equivalent to three times NMW (EUR 1,905). The company pays the total amount to the employee and 70% will be reimbursed by the Social Security.

  ii. Reduction of working periods: the employee is entitled to the remuneration proportional to his or her working hours (now reduced). However, when this proportionally reduced

remuneration is inferior to two-thirds of the employee's normal salary, he or she will be entitled to compensation corresponding to the difference between the reduced salary and two-thirds of his or her normal salary, with a maximum limit of EUR 1,905. The Social Security will reimburse the company 70% of the compensation amount. When two thirds of the normal salary is less than the NMW (EUR 635), the difference will be calculated with this amount as a reference.

The suspension of employment agreements or the reduction of regular working hours is effective immediately. The supports granted by the Social Security may have the duration of one month, which may be exceptionally extended, monthly, up to a maximum of three months.

– **Procedure**

In order to have access to the support, the employer must notify the employees in writing, disclosing the applicable measures and their expected duration, having listened to the works council or union delegates (if any).

On the same day, the abovementioned required documentation must be sent to the Social Security, through the *Segurança Social Direta*, also filling in form **RC 3056-DGSS**, available on the Social Security's website, as well as a nominative list of the affected employees with their social security numbers.

During the application of the measure, the company should provide a separate remuneration statement in relation to the affected employees and pay the respective employees' social charges (i.e. the 11% payable by the employees and deducted from their salaries).

– **Extensions / Renewals**

Extensions should be requested by completing the appropriate form (**model RC 3057-DGSS**). A new list of employees to whom the measure will be applied should also be submitted in line with the template available on the Social Security's website.

– **Obligations and prohibited actions**

During the time these measures are applicable, as well as in the 60 days following the same, the employer cannot terminate employment agreements by way of collective dismissal or individual redundancy.

The employer's failure to comply with the obligations in relation to the support provided in this statute entails the immediate termination of such support and the repayment or payment, as the case may be, of all or part of the amounts already received or exempted, when any of the following situations occur:

i. Dismissal (except if due to circumstances attributable to the employee, i.e. dismissal with a justifiable cause);

ii. Failure to comply, in a timely manner, with the obligation to pay the remuneration;

iii. Non-compliance with legal, tax or contributory obligations;

iv. Distribution of profits, in any form, while obligations derived from the incentives are being applied.

v. Failure to comply with the obligations assumed within the established deadlines;

vi. Provision of false declarations;

vii. The employee affected by the measure suspending the employment agreement performing work for the employer, or the employee working outside of the established working schedule, in the case of a temporary reduction of the regular working hours.

– **Additional measures**

Companies who benefit from support under the simplified lay-off are also entitled to:

i. **Exceptional financial incentives to support the company's commencement of activity**, paid in one single instalment, in the amount of one NMW (EUR 635) per employee, by filing a request with the IEFP, I.P.[21];

ii. **Total exemption from payment of social security contributions** (only those borne by the company) in respect of the employees affected by the measures and the members of corporate bodies, during the period in which the measure applies.

Note: Under article 25-C of Decree-Law 10-A/2020, companies with establishments whose activities are no longer affected by the closure restrictions after the termination of the state of emergency or the restrictions imposed by legislative or administrative measures, continue to be able to access the simplified lay-off mechanism, provided that they resume their activity within eight days.

- **Extraordinary Vocational Training Plan**

  Decree-Law 10-G/2020 also provides that companies that have not applied for the abovementioned extraordinary support (the simplified lay-off) may apply for another form of exceptional support, for part-time vocational training, envisaging the maintenance of job positions and the improvement of the employees' skills and capabilities.

  The exceptional support is granted per each employee and supported by the IEFP, I.P., corresponding to 50% of the net remuneration, up to a maximum of one NMW (EUR 635.00).

  This support has a duration of one month, and is aimed at the implementation of a training plan.

  The vocational training plan must be organised and approved by the IEFP, I.P., and will be implemented in connection with the employer.

  The duration of the professional training must not exceed 50% of the normal working period.

[21] This incentive will be regulated by an order of the member of the Government responsible for employment.

Companies which benefit from this measure are also entitled to benefit from the exceptional financial incentives to support the company's commencement of activity and the total exemption from payment of social security contributions mentioned above.

REINFORCED POWERS FOR THE LABOUR INSPECTORATE

Law no. 14/2020, of 9 May, has reinstated the reinforced powers of the Portuguese Labour Inspectorate (the Working Conditions Authority).

In this context, whenever a labour inspector verifies the existence of signs of a dismissal in breach of articles 381 (general grounds for unlawful dismissal), 382 (unlawful dismissal for an act attributable to the employee), 383 (unlawful collective redundancy) or 384 (unlawful individual redundancy) of the Portuguese Labour Code, he/she must draw up an official report and notify the employer so that the latter regularises the situation.

Until the employee's situation is regularised or a final judgment has been issued on the dismissal, the employment contract will not be terminated, and all the rights and obligations of the parties will be maintained, such as the employee's right to remuneration and the parties' social security obligations.

EXCEPTIONAL AND TEMPORARY RULES TO COMPLY WITH SOCIAL SECURITY CONTRIBUTION OBLIGATIONS

- **Deferral of social security contributions**

  Employers in the private and social sector may defer the payment of their social security contribution if they have:

  (a) Fewer than 50 employees;

(b) Between 50 and 249 employees, provided that their rate of invoicing drops by at least 20%, which can be proven through the *E-Fatura*[22] online invoicing platform for March, April and May 2020 compared to the same period in 2019 or, for those who started their activity less than 12 months ago, if they compare their current figures to their average period of activity;

(c) 250 or more employees, provided that their rate of invoicing drops by at least 20%, which can be proven through the *E-Fatura*[23] online invoicing platform for March, April and May 2020 compared to the same period in 2019 or, for those who started their activity less than 12 months ago, if they compare their current figure to their average period of activity, and fall under one of the following situations:

i. the company is a private institution of social solidarity (*instituição particular de solidariedade social*) or similar;

ii. the company's activity falls under one of the sectors whose activity has been forced to cease as per the Decree of the Council of Ministers 2-A/2020[24], or it forms part of the aviation or tourism sectors;

iii. the company's activity has been suspended by means of a legislative or administrative order, under the terms provided for in Decree-Law 10-A/2020, as amended, in the General Civil Protection Law (*Lei de Bases da Proteção Civil*), approved by Law 27/2006, of 3 July, as amended, or in the General Health Law, approved by Law 95/2019, of 4 September.

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[22] When invoices submitted through the online invoicing platform *E-Fatura* do not reflect the total number of transactions carried out subject to VAT, even if they are VAT exempt, relating to the supply of goods and services, for the periods under analysis, the drop in invoicing must be calculated with reference to turnover, with the corresponding certification from a certified accountant.

[23] See previous footnote.

[24] The Decree of the Council of Ministers 2-A/2020 was revoked, as was the Decree of the Council of Ministers 2-B/2020 and the Decree of the Council of Ministers 2-C/2020.

The number of employees is calculated with reference to the payslips for the month of February 2020.

The abovementioned deferment option also applies to self-employed persons.

- **Payment of deferred social security contributions**

The social security contributions payable by employers (i.e. at a 23.75% rate over the employees' salaries) that are due in March, April and May 2020, may be paid as follows:

(i) One-third of the monthly amount can be paid in the month in which it is due and payable;

(ii) The remaining two-thirds will be payable in equal and successive instalments in the months of July, August and September 2020 or from July to December 2020, without interest.

Companies that had already fully paid their social security contributions due in March 2020 (relating to February earnings), could have started to defer their contribution payments in April 2020 and may continue to do so until June 2020.

In June 2020 employers must indicate, through the online platform *Segurança Social Direta*, which of the payment periods mentioned above (three or six months) they intend to use.

This deferment does not need to be specifically requested.

Employers may pay their social security contributions in full and therefore opt not to benefit from the deferment option.

Evidence of the requirements to be eligible to make payments in instalments will be shown during the month of July, together with a certificate from the company's certified accountant.

The failure to comply with the requirements to pay social security contributions shall result in the immediate termination of the benefits granted and the failure to comply with the requirements to be eligible for deferment shall result in the total amount of the pending instalments becoming immediately due and payable, together with the withdrawal of the above-mentioned exemption from interest.

- **Suspension of instalment plans and enforcement proceedings**

  Ongoing instalment plans related to enforcement proceedings (without prejudice to the voluntary compliance with these instalment plans) and enforcement proceedings with the Social Security are suspended until 30 June 2020.

- **Exceptional extension of social security benefits**

  Unemployment benefits and other social security payments guaranteeing minimum subsistence levels which concession period or renewal would end before 30 June 2020 are exceptionally extended.

  The reassessment of the conditions for maintaining welfare benefits ensured by the Social Security is also exceptionally suspended.

  The abovementioned extension and suspension apply until 30 June 2020.

Tax law, proceedings and procedure matters

In order to attenuate the effects of the outbreak of COVID-19 and to mitigate the tax burden on taxpayers, a series of measures have been adopted at the legislative level in relation to the payment of taxes and the operational services provided by the Portuguese Tax and Customs Authority ("**PTA**").

The following is a summary of the measures taken.

TAX COMPLIANCE

- **Special CIT advance payment** – the deadline for payment of the first instalment of the Special CIT Advance Payment (*pagamento especial por conta*) has been extended from 30 March to 30 June 2020.
- **CIT return filing** – the deadline for submitting the CIT return (*Declaração Modelo 22*) has been extended from 31 May to 31 July 2020.
- **Delivery of the Simplified Company Information (I*nformação Empresarial Simplificada*)**- the deadline for submitting the Simplified Company Information (*Informação Empresarial Simplificada*) was extended to August 7, 2020, without any penalties.
- **Preparation and/or delivery to the PTA of the tax and transfer pricing files** - the deadline that taxpayers have to preparation and/or delivery their tax and transfer pricing files has been extended to August 31, 2020
- **CIT advance payment** – the deadline for payment of the CIT Advance Payment (*pagamento por conta*) has been extended from 31 July to 31 August 2020.
- **Additional CIT advance payment** – the deadline for payment of the first instalment of the Additional CIT Advance Payment (*pagamento adicional por conta*) has been changed from 31 July to 31 August 2020.

- **Delivery of the periodic VAT returns** – VAT periodic returns listed below may be delivered and paid, with no interest or penalties, within the following deadlines:
  - the monthly periodic VAT return regarding the month of March may be delivered until 18 May 2020 and paid until 25 May 2020, without prejudice to the payment by instalments mentioned below;
  - the monthly periodic VAT return regarding the month of April may be delivered until 18 June 2020 and paid until 25 June 2020, without prejudice to the payment by instalments mentioned below;
  - the quarterly periodic VAT return regarding the first quarter of 2020 may be delivered until 22 May 2020 and paid until 25 May 2020, without prejudice to the payment by instalments mentioned below.
- **Fulfilment of the periodic VAT returns** – the periodic VAT returns regarding the period from March 2020 (for taxpayers covered by the monthly regime), and regarding the first quarter of 2020 (for taxpayers covered by the quarterly regime) may be submitted with data from the *E-fatura* service, without reference to the relevant supporting documents, namely reconciliation documents and information in paper form. Regularisation of the situation may be carried out by means of a replacement return, without additions and penalties, provided the new return and its payment or settlement occur during the month of August 2020. This regime is only applicable**:**
  - to taxpayers with a turnover, under the terms of Article 42 of the VAT Code, of up to EUR 10 million in 2019;
  - to taxpayers who have started their activity on or after January 2020; or
  - to taxpayers who have restarted their activity on or after January 2020 and therefore did not have turnover in 2019[25]**.**

[25] A similar regime had already been established for periodic VAT returns for the period February 2020 and whose replacement and payment/settlement without additions or penalties must occur during July 2020.

- **Invoices** – during the months of April, May and June, PDF invoices will be considered electronic invoices for all purposes provided for in tax legislation.
- **Justifiable reasons for failing to comply with tax obligations** – Infection or prophylactic isolation of taxpayers or chartered accountants are considered as justifiable reasons for the failure to comply with tax obligations in case of: (i) infection and prophylactic isolation due to COVID-19, duly confirmed by a health authority; and (ii) prohibition on travelling to and from their tax or business domicile due to its location being in a lockdown area.
- **Monthly Stamp Duty Return** – the requirement to file this new monthly return from April 2020 onwards has been postponed and will now apply from January 2021. Therefore, for the year 2020 there is no requirement to submit this declaration and taxpayers must continue to follow the stamp duty assessment and submission procedures that were applicable until the end of 2019. In relation to the requirement to assess and pay stamp duty relating to April and May 2020, this payment must be made, without any interest or fines, by 25 May and 25 June 2020, respectively.
- **Withholding taxes** - the delivery of withholding taxes regarding the months of April and May 2020, pursuant to article 98 of the PIT Code (*Código do IRS*) and article 94 of the CIT Code (*Código do IRC*), may be completed until May 25 and June 25, respectively.

These measures were approved by Decree-Law 10-F/2020, Order 104/202-XXII, of 9 March, Order 121/2020-XXII, of 24 March and Order 153/2020-XXIIb , of 24th April by the Secretary of State for Fiscal Affairs.

PAYMENT OF SOCIAL SECURITY CONTRIBUTIONS

Please see the section on **Employment and social security law matters**.

PAYMENT OF TAXES

- **Methods of payment**

Further to the restrictions imposed on the normal operation of the PTA's local tax offices (see more details below), the methods available to pay taxes (except those taxes for which payment has been

suspended or deferred, see above for more details) should, in principle, be limited to the following: direct debits, bank transfers and postal orders (subject to the public still being able to access post offices, banks and other credit institutions).

According to the information provided by the PTA on their website *Portal das Finanças*: "*(...) whenever possible, taxpayers should give preference to electronic means of payment, such as homebanking or MBWay (available on* Portal das Finanças *and on our mobile app called "*Situação Fiscal – Pagamentos"*. We ask taxpayers not to make payments in cash or by cheque at local tax offices, whenever there are electronic alternatives for payment available*".

The rules set out in the *Código de Processo e Procedimento Tributário* that relate to transfers of assets in lieu of cash payments of taxes owed (*dação em cumprimento*), offsetting tax debts and credits (*compensação*) and payment by instalments (*pagamento em prestações*) are still in force.

The consequences of the tax law for non-compliance with the obligation to pay taxes are also unchanged.

- **Payment by instalments**

– **Taxes covered**: VAT (on a monthly and quarterly basis) and PIT and CIT withholdings, for which the deadline for payment is the second quarter of 2020.

– **Eligibility**: Taxpayers that:

(i) Have a turnover of EUR 10 million or less in 2018;

(ii) Commenced (or restarted) their business activity as of 1 January 2019 (and therefore have no turnover in 2018);

(iii) Operate in one of the sectors forced to close as a result of the declaration of the state of emergency pursuant to article 7 of Decree of the Council of Ministers 2-A/2020[26]; or

[26] Considering that the Decree of the Council of Ministers 2-A/2020 was revoked by the Decree of the Council of Ministers 2-B/2020 and that the latter was revoked and replaced by Decree of the Council of Ministers 2-C/2020, we take the view that the legal references made to Decree of the Council of Ministers 2-A/2020 and Decree of the

(iv) Register an average decline in the invoicing reported through the *E-fatura* service of at least 20% in the last three months before the relevant month of payment, in relation to the same period for last year[27].

– **Payment options**:

(i) Immediate payment;

(ii) Payment in three or six monthly instalments without interest, with the first instalment being due at the relevant date of payment and the following instalments due on the same date in the following months;

– **Formalities**[28]

(i) Waiver of guarantee;

(ii) Payment by instalments to be requested electronically until the deadline for voluntary payment elapses.

Tax enforcement proceedings

– Suspension of ongoing or new tax enforcement proceedings with the PTA and SS, at least until 30 June 2020;

Council of Ministers 2-B/2020 should be understood as being made to the Decree of the Council of Ministers 2-C/202.

[27] When the invoices reported through the *E-Fatura* service do not reflect all the transactions carried out subject to VAT relating to the transmission of goods and the rendering of services for the relevant periods, including the ones that are exempt, the decline in invoicing will be assessed based on the turnover as provided for by article 143 of the CIT Code. In any event, the decline in invoicing / turnover should be demonstrated by an auditor (*Revisor Oficial de Contas*) or chartered accountant.

[28] In matters not specifically regulated, Decree-Law no. 492/88, of 30 December, in its current wording, should be applicable.

– Suspension of the ongoing instalment plans related to tax enforcement proceedings, without prejudice to the taxpayer voluntarily complying with these instalment plans;

– Authorisation to extend the suspension of enforcement proceedings beyond 30 June 2020 in relation to the payment of ongoing instalment plans, which were finalised by cooperation agreements with private social solidarity institutions (to be decided by the Social Security).

Retrospective effect

These changes will have retrospective effect from 12 March 2020.

These measures were approved by Decree-Law no. 10-F/2020, of 26 March (as amended by Declaration of rectification 13/2020 of 28 March).

PATRONAGE REGIME

- **Income tax benefits**:

Under the terms of the rules set out in article 62 and following of the Tax Benefits Statute (*Estatuto dos Benefícios Fiscais*) donations - in cash or in kind - made by resident entities and permanent establishments of non-resident entities subject to CIT and resident individuals subject to PIT, made to the Portuguese State, Autonomous Regions and local authorities and any of their services, establishments and bodies, as well as to associations of municipalities and parishes, and also foundations in which they participate in the initial assets, may be increased and deducted from taxable income for the purposes of the income tax due by the donor.

To this end[29], the Secretary of State for Fiscal Affairs has determined, through Order 137/2020-XXII, of 3 April, that, during the period of emergency in Portugal resulting from the new Coronavirus pandemic, the SPMS - Serviços Partilhados do Ministério da Saúde, E.P.E., as well as hospitals incorporated as public corporate entities (*Entidade Pública Empresarial - E.P.E.*) integrated in the Health Service of the Autonomous Regions, are also eligible for the purposes of receiving the

[29] And also for the purposes of the stamp duty exemption provided for in Article 1(5)(c) of the Stamp Duty Code.

donations mentioned above, thus ruling out the previous position taken by the PTA according to which E.P.E. hospitals were not covered by said regime (please refer to the Binding Ruling issued in Case 2047/2017, with the approval of the Director of CIT Services, on July 7, 2017).

As per this order, the donated goods may be materially delivered to hospitals E.P.E., but SPMS - Serviços Partilhados do Ministério da Saúde, E.P.E, and the E.P.E. hospitals integrated in the Regional Health Service of the Autonomous Regions are responsible for complying with the ancillary obligations provided for in article 66 of the Tax Benefits Statute.

Lastly, the Secretary of State for Tax Affairs has also determined that the issuance of a document evidencing the amount of the donation, to be issued as per Article 66(1)(a) of the Tax Benefits Statute, may be exceptionally issued by a third party intermediating the donations on behalf of the beneficiary, with the consent of the latter. The intermediary must maintain an updated record of the donors as per Article 66(1)(b) of the Tax Benefits Statute and provide the beneficiary in a timely manner with the information necessary to fully comply with the obligations provided in paragraphs b) and c) of no. 1 of article 66 of that Statute.

- **Exemption from VAT on donations**:

The supply of goods free of charge to (i) the State, (ii) private charitable institutions and (iii) non-governmental non-profit organizations, for subsequent distribution to people in need, even if the goods remain the property of those entities are exempt from VAT.

As per Order 122/2020-XXII, of 24 March, of the Secretary of State for Fiscal Affairs clarified that those who are receiving health care in the context of the pandemic are considered to be people in need for the purposes of this exemption as long as the period of emergency in Portugal due to the pandemic lasts.

The exemption is complete, in the sense that taxpayers carrying out the supply free of charge (the patron) retain their right to deduct input VAT borne on the goods donated.

VAT AND IMPORT DUTIES RELIEF APPLICABLE TO GOODS NEEDED TO FIGHT COVID -19

- **Relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020**

Under Commission Decision (EU) 2020/491 of 3 April 2020, goods shall be admitted free of import duties and exempted of VAT on the imports where following conditions are fulfilled:

- the goods are intended for one of the following uses: (i) distribution free of charge by the State bodies and equivalent entities referred in the Decision to the persons affected by or at risk from COVID-19 or involved in combating the COVID-19 outbreak; or (ii) being made available free of charge to the persons affected by or at risk from COVID-19 or involved in combating the COVID-19 outbreak while remaining the property of the State bodies and equivalent entities referred in the Decision;
- the goods satisfy the requirements laid down in Articles 75, 78, 79 and 80 of Regulation (EC) No 1186/2009 and Articles 52, 55, 56 and 57 of Directive 2009/132/EC; and
- the goods are imported for free circulation by or on behalf of the State bodies and equivalent entities referred in the Decision.

This regime shall apply to importations made from 30 January 2020 to 31 July 2020.

Goods shall also be admitted free of import duties within the meaning of Article 2(1)(a) of Regulation (EC) No 1186/2009 and exempted of VAT on the imports within the meaning of Article 2(1)(a) of Directive 2009/132/EC, where they are imported for release into free circulation by or on behalf of disaster relief agencies in order to meet their needs during the period they provide disaster relief to the persons affected by or at risk from COVID-19 or involved in combatting the COVID-19 outbreak.

- **VAT exemption on the supply of goods and intra-community acquisitions of goods needed to combat the effects of the COVID-19**

As per Law no. 13/2020, of 7 May, a VAT exemption will temporarily apply to the supply of goods and to intra-community acquisition of goods needed to combat the effects of the COVID-19 outbreak during 2020 by the Portuguese State and other State bodies and non-profit entities. Moreover, the legal grounds for this exemption must be evidenced in the relevant invoices.

- **VAT reduced rate of 6% to protection masks and skin disinfectant**

Law no. 13/2020, of 7 May, also determines the enforcement of the VAT reduced rate of 6% to imports, supply and intra-community acquisition of respiratory protection masks and skin disinfectant gel.

TAX PROCEEDINGS AND PROCEDURE

Pursuant to Law 1-A/2020 (as amended by Law 4-A/2020), the following measures have been implemented effective as of 9 march in relation to tax proceedings and procedures:

- **The statute of limitations and prescription deadlines are suspended** for all proceedings and procedures;
- **Administrative and tax deadlines in favour of the taxpayer are suspended** covering, in the latter case, only acts related to the filing of judicial claims (*impugnação judicial*), administrative claims (*reclamação graciosa*), administrative appeals (*recurso hierárquico*) or other procedures of the same kind and all subsequent procedural acts;
- **Acts may be carried out by computer platforms which make it possible to carry them out by electronic means or by appropriate means of remote communication**, such as teleconferencing, video calling or other equivalent, as long as all the parties consider that they are able to ensure their practice by such means.

This exceptional situation applicable as of 9 March was ceased by Law 16/2020, which has revoked the deadline suspension framework in place better detailed above, and the deadlines were resumed in the following terms:

- **Judicial deadlines before the judicial and arbitration courts** resume their course as of 3 June 2020; and
- **Administrative and tax deadlines in favour of the taxpayer and statute of limitation and prescription deadlines:**
  - Administrative deadlines which would have fallen during the above mentioned suspension regime or which would have fallen during the 20 working days after the entry into force of

Law 16/2020 are considered to expire on the 20th (twentieth) working day after the entry into force of Law 16/2020 (i.e., 3 July 2020);

- Administrative deadlines which would have fallen more than 20 working days after the entry into force of Law 16/2020, i.e. after 3 July 2020, will expire as per their original term;
- Deadlines regarding administrative offences, resume their course as of 3 June 2020;
- Statute of limitations and prescription periods that cease to be suspended as a result of the amendments introduced by Law 16/2020 resume their course as of 3 June 2020 and are extended by the period of time during which they were suspended (i.e., 86 days).

For further detail please see below the sections on **Procedural law matters** and **Public Law matters**.

PTA RECOMMENDATIONS – COVID-19

The following recommendations on the use of PTA services / access to local tax offices have been issued:

i. Priority to be given to using *Portal das Finanças* and the PTA call centre;

ii. Priority to be given to notifying claims and requests through *Portal das Finanças – E-balcão*;

iii. Taxes preferably to be paid by electronic means;

iv. In the event of an emergency or necessity, an appointment can be made through *Portal das Finanças* or the PTA call centre. No assistance will be provided in local tax offices without an appointment.

   a. PTA Call Centre Service - +351 217 206 707

   b. Opening hours from 9 a.m. to 7 p.m. on working days and 24/7 automated service for tax refund matters.

Impact for the movement of persons

As part of the declaration of a state of calamity, some of the measures that were adopted in the context of the state of emergency with an impact on the entry, stay, exit and removal of foreign citizens from national territory, were kept.

These measures aim, on the one hand, to contain the spread of the epidemic and at the same time ensure the exercise of foreign citizens' rights.

LIMITATIONS ON MOVEMENT ON PUBLIC ROADS AND ACCESS TO GOODS AND SERVICES

Like national citizens, foreign citizens who are in Portuguese territory are subject to the restrictions on freedom of movement resulting from the declaration of a state of calamity (please see the section on the general considerations on the **state of calamity and the exceptional measures approved by the Government** above), namely the civil duty of home confinement, where applicable.

They shall also be subject to the constraints on access to goods and services and the exercise of their professional activities, including the operation of their commercial establishments, arising from the limitations imposed by the Resolution of the Council of Ministers 40-A/2020, also identified in that chapter above.

LIMITATIONS ON CROSS-BORDER MOVEMENTS

Without prejudice to the fact that the holders of residence permits in Portugal are guaranteed entry into Portugal, the movement of foreign citizens into and out of Portuguese territory and the Schengen area is subject to several limitations, as is the case with national citizens.

These limitations are summarised in the following chapter on the implications for transport law.

VALIDITY OF IDENTITY DOCUMENTS AND EQUIVALENT

A provisional regulation has been implemented allowing the use and presentation of identification documents and other documents required for to exercise of rights that are due to expire during the state of emergency.

The public authorities accept, for all legal purposes, documents that may be renewed and which validity period has expired after 9 March 2020 or on the 15 days prior to this date.

On the other hand, the Portuguese identification card (*cartão de cidadão*), certifications and certificates issued by the civil registration and identification services and driving licences, as well as documents and visas concerning stays in the national territory, together with the licences and permits which expire after 9 March 2020 or on the 15 days prior to this date, will be accepted, on equal terms, until 30 October 2020.

These documents shall continue to be accepted on the same terms after 30 October 2020, provided that the holder proves that he has already scheduled their renewal.

RIGHTS OF FOREIGN NATIONALS WHOSE APPLICATIONS ARE PENDING

In accordance with the Joint Order of the Minister of State and of the Presidency, the Minister of Internal Administration; and the Minister of Work, Solidarity and Social Security, and the Minister of Health (Order 3863-B/2020, of 27 march 2020), the following foreign citizens are legally entitled to remain in Portugal:

- Foreign citizens whose applications under Law 23/2007, of 4 July, were pending before the SEF as at 18 March 2020; and
- Foreign citizens who had filed applications under Law 26/2014, of 5 May, which amended Law 27/2008, of 30 June, which sets forth the conditions and proceedings to grant asylum or subsidiary protection.

The persons referred to in the preceding paragraph can certify their legitimacy to stay in the country as follows:

- In the applications submitted under articles 88, 89 and 90-A of Law 23/2007, of 4 July, through an expression of interest document or request issued by the registration platforms in use at SEF;
- For other pending cases, not processed online, such as the granting or renewal of residence permits, under either the general or the exceptional regime, a document proving that the person has an appointment with the SEF or confirmation that the application has been made.

These documents are valid for all public services, such as to obtain the Portuguese national healthcare number, to have access to the Portuguese national healthcare system, to other healthcare rights and to social benefits, to enter into lease agreements and employment contracts, to open bank accounts and to engage essential public services.

PUBLIC SERVICE MANAGEMENT OF SEF

SEF's in-person service to the public is limited to exceptional and urgent cases. Appointments are available in the following urgent situations:

i. Citizens who need to travel or who can prove they have an urgent and unavoidable reason to be absent from Portuguese territory for unforeseeable and unavoidable reasons; and

ii. Citizens whose documents were lost or stolen.

The Office of Asylum and Refugees remains open to the public for the submission and registration of new applications for international protection. Legal terms in international protection proceedings are suspended.

The services provided by the Automatic Pre-Appointment System (known as SAPA, for its Portuguese acronym) and other systems used by the SEF are suspended, and all scheduled appointments that were scheduled up to 27 March 2020 will be rescheduled starting on 1 July 2020, in chronological order so as to ensure the equal treatment of foreign citizens.

SIMPLIFIED PROCEDURE FOR THE GRANTING AND RENOVATION OF RESIDENCE PERMITS

In light of the restrictions imposed to the in-person service to the public and the normal operation of SEF in the context of COVID-19 outbreak, a simplified procedure has been put in place for the

purposes of granting certain residence permits as well as for the renewal of residence permits, as per Joint Order of the Minister of State and of the Presidency, the Minister of Internal Administration; and the Minister of Work, Solidarity and Social Security (Order 5793-A/2020, of 26 may 2020)

The purpose of the simplified procedure is to avoid the displacement of the applicants to the in person service of SEF. In order to do so, SEF should carry out several consultations to its data bases and before third entities in order to confirm that the applicants comply with the requirements for the purposes of the granting or renewal of the residence permit. SEF should also accept the online submission of the documents necessary for the granting or renewal of the permits without requiring that the originals are submitted in paper form (even if the documents have in the meanwhile expired).

In accordance with the Order the simplified procedure should be kept for a year.

Financial law matters

Owing to the public health emergency caused by the outbreak of the new coronavirus (COVID-19) on a global scale and the disruption it is causing to Portugal and its economy, the Portuguese Government has announced a set of country-based mitigation measures. These measures include granting credit lines to help Portuguese companies operating in the most affected sectors of the Portuguese economy - which have been adversely affected by a short-term funding squeeze due to the impact of this public health crisis.

CREDIT LINE «LINHA DE CRÉDITO CAPITALIZAR 2018 - COVID-19»

Council of Ministers Resolution no. 10-A/2020 of 13 March, which approved a set of measures concerning the pandemic caused by the new coronavirus - COVID-19, launched the first credit line, aimed at supporting micro, small and medium-sized enterprises from all sectors of the economy that have received an Electronic Statement from the Portuguese Agency for Competitiveness and Innovation (*IAPMEI*) as well as other companies in Portugal that meet the eligibility criteria.

The purpose of this credit line ("**Linha de Crédito Capitalizar 2018 – COVID-19**") was to enable companies to obtain better financing conditions, namely in terms of price and duration, taking into consideration their working capital and cash-flow needs, such as the payment of wages, or the acquisition of products and raw materials.

The *Linha de Crédito Capitalizar 2018 – COVID-19*, for up to EUR 400 million, was available through PME Investimentos (a state-owned company whose mission is to promote the development of and to increase the offer of financing to Portuguese companies). It was divided into two different sublines; one line aimed to support the working capital of micro, small and medium-sized enterprises for up to EUR 320 million ("**Covid 19 - Fundo de Maneio**") and another line supported the cash flow of such companies for up to EUR 80 million ("**Covid-19 - Plafond Tesouraria**"). The maximum financing per company was EUR 3 million: EUR 1.5 million allocated to the Covid 19 - Fundo de Maneio and EUR 1.5 million allocated to Covid-19 - Plafond Tesouraria.

On 7 April 2020, PME Investimentos issued a press release to the effect that Linha de Crédito Capitalizar 2018 – COVID-19 had been exhausted.

CREDIT LINES «LINHA DE APOIO À ECONOMIA COVID-19»

Additionally, the Portuguese Government launched four credit lines for a total of EUR 6.2 billion for Portuguese companies pertaining to the sectors which have been most severely impacted on an economic level by the outbreak of COVID-19.

Such credit lines, which aim to mitigate the difficulties faced by these companies to generate cash-flow: (i) are conditional on the maintenance of permanent jobs until 31 December 2020; (ii) are made available through the adherent banks (applications are analysed and decided autonomously by the adherent banks, taking into account their credit risk policy); (iii) have a grace period (*período de carência*) of up to 18 months; and (iv) have an amortization period (*período de amortização*) of six years. Furthermore, the loans granted by means of these credit lines have interest margins of between 1% and 1.5% depending on the maturity of the loans.

- **Economic Activity Support Line**

A credit line of up to EUR 4.5 billion was made available, EUR 1.7 billion of which were allocated to micro and small-sized enterprises, with the remaining EUR 2.8 billion being allocated to medium-sized enterprises, small-mid-cap companies and mid-cap companies, provided that their activity was considered eligible for this specific credit line. This credit line was available to several economic sectors, including: (i) extractive industries; (ii) manufacturing; (iii) electricity, gas, steam, hot and cold water and cold air; (iv) water collection, treatment and distribution, sanitation, waste management and depollution; (v) construction; (vi) wholesale and retail trade; (vii) transportation; (viii) information and communication activities; (ix) real estate activities; (x) consulting, scientific, technical and similar activities and (xi) human health and social support activities.

The interest rate was fixed or floating, increased by a margin of 1% (for loans with a maturity not exceeding 1 year), 1.25% (for loans with a maturity between 1 and 3 years) or 1.5% (for loans with a maturity exceeding 3 years).

The maximum financing per company was as follows:

i. EUR 50,000 for micro-enterprises;

ii. EUR 500,000 for small enterprises;

iii. EUR 1.5 million for medium-sized enterprises; and

iv. EUR 2 million for small-mid-cap and mid-cap companies.

Owing to the number of transactions that have been awarded, this credit line (known as "Economic Activity Support") has already been exhausted.

- **Restaurants and food service industry**

A credit line of up to EUR 600 million is available for the restaurant and food service industry, EUR 270 million of which are allocated to micro and small-sized enterprises, EUR 321 million are allocated to medium and small-mid-cap companies and EUR 9 million are allocated to mid-cap companies. The interest rate is fixed or floating and increased by a margin of 1% (for loans with a maturity not exceeding 1 year), 1.25% (for loans with a maturity between 1 and 3 years) or 1.5% (for loans with a maturity exceeding 3 years).

The maximum financing per company is as follows:

i. EUR 50,000 for micro-enterprises;

ii. EUR 500,000 for small enterprises; and

iii. EUR 1.5 million for medium-sized enterprises, small-mid-cap and mid-cap companies.

- **Tourism**

In the tourism sector, the following credit lines are (were) available:

i. a credit line of up to EUR 200 million for travel agencies, tourism animation, events and similar activities, of which EUR 75 million are allocated to micro and small enterprises (this credit line has already been exhausted);

ii. a credit line of up to EUR 900 million for tourism companies, including tourism developments and tourist accommodation, of which EUR 300 million are allocated to micro and small enterprises; and

iii. a credit line of up to EUR 60 million, operated by *Turismo de Portugal, I.P.*, for micro-enterprises in the tourism sector that have a maximum of ten employees and an annual turnover or an annual balance sheet not exceeding EUR 2 million, and that demonstrate that their activity has been negatively affected by the pandemic (see Legislative Order 4/2020 of 25 March (*Despacho Normativo n.º 4/2020, de 25 de março*))[30].

With regard to the credit lines referred to in points i. and ii. above, the interest rate is fixed or floating, increased by a margin of 1% (for loans with a maturity not exceeding 1 year), 1.25% (for loans with a maturity between 1 and 3 years) or 1.5% (for loans with a maturity exceeding 3 years). The maximum financing amount to be granted per company will be as follows:

i. EUR 50,000 for micro-enterprises;

ii. EUR 500,000 for small enterprises; and

iii. EUR 1.5 million for medium-sized enterprises, small-mid-cap and mid-cap companies.

In relation to the credit line referred to in point iii. above, there is no interest rate and the maximum financing per company is EUR 20,000.

For more information on these four new credit lines, please see the "**Documento de Divulgação Linha Apoio à Economia (6,2Bi)"**[31].

CREDIT LINE «LINHA DE CRÉDITO INVESTE RAM COVID-19»

Additionally, a credit line ("**Linha de Crédito Investe RAM Covid-19**") of up to EUR 100 million was launched specifically for companies with registered offices in the Autonomous Region of Madeira, in order to enable companies in the region affected by the outbreak of COVID-19 to finance their

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[30] For more information on this new credit line, please go to the website: http://business.turismodeportugal.pt/pt/Investir/Financiamento/Programas_incentivos/Paginas/linha-apoio-tesouraria-microempresas-turismo-covid-19.aspx.

[31] Available on the following website: https://www.spgm.pt/pt/catalogo/linha-de-apoio-a-economia-covid-19/.

cash flow needs under better pricing and term conditions and thereby help maintain employment levels.

This credit line is mainly aimed at micro, small and medium-sized enterprises, certified through the website http://www.ideram.pt, which perform an activity that is considered eligible for this credit line and that comply with the other eligibility conditions set out in the website of the Institute for Business Development of the Autonomous Region of Madeira (*Instituto de Desenvolvimento Empresarial da Região Autónoma da Madeira*)[32].

This credit line is also made available and formalised by the adherent banks and expires on 31 December 2020 (although subject to extensions). The transactions in question are short and medium term bank loans, with a grace period (*período de carência*) of up to 18 months and an amortisation period (*período de amortização*) of five years, with quarterly payments. The interest rate is fixed or floating and increased by a margin of up to 1.5%. The maximum financing per company is as follows:

i. EUR 30,000 for micro-enterprises;

ii. EUR 150,000 for small enterprises;

iii. EUR 300,000 for medium-sized enterprises; and

iv. EUR 600,000 for large enterprises.

CREDIT LINE «LINHA CAPITALIZAR 2018»

Finally, the Linha Capitalizar 2018 credit line, launched by the Ministry of Economy on 11 July 2018, was extended to 31 May 2020 and its maximum amount was first increased from EUR 2.4 billion to EUR 2.8 billion and then to EUR 3.2 billion. Since all funds have been allocated, and as the deadline has passed, no new applications can be made for this credit line. Besides small and medium-sized enterprises, companies with an annual turnover of up to EUR 15 million and which were not part of

32 http://www.ideram.pt/Content/PaginasPublicas/Servicos-IDE-apoios-2014-2020-Instrumentos-Financeiros-INVESTERAM2020-COVID19.

a business group with a turnover of more than EUR 200 million could also apply. The allocation of funds to each of the specific lines of the Linha Capitalizar 2018 credit line and their respective appropriations were made taking into account their use, on a first-come, first-served basis.

SAFETY INCENTIVES

Decree-Law 20-G/2020 of 14 May ("**Decree Law 20-G/2020**") establishes a safety incentive scheme for micro, small and medium-sized enterprises, in the context of COVID-19 ("**Programa ADAPTAR**"). The Programa ADAPTAR aims to support companies in their efforts to adapt and invest in their establishments, adjust work organisation methods and relationships with clients and suppliers to the new conditions owing to the COVID-19 pandemic and ensure compliance with the established regulations and recommendations of the competent authorities. Projects relating to all economic activities are eligible for these incentives, except for those involving: (i) fisheries and aquaculture, (ii) primary agricultural production and forestry, and (iii) the processing and marketing of agricultural products listed in Annex I to the Treaty on the Functioning of the European Union [33] and the processing and marketing of forestry products. Projects relating to specific financial and insurance, defence and lottery activities/financial, insurance, defence and lottery/gambling activities set out in Decree-Law 20-G/2020, are also not eligible.

The incentives are granted in the form of subsidies for eligible expenses incurred by the beneficiary enterprises. The subsidies awarded are 80% for micro-enterprises and 50% for small and medium-sized enterprises.

MORATORIUM ON BANK CREDIT

Decree-Law no. 10-J/2020, of March 26 ("**Decree-Law 10-J/2020**") approved a set of measures aimed at ensuring the continued financing of families and businesses in order to prevent events of default and includes a statutory moratorium until 30 September 2020 ("**Moratorium**").

[33] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT.

The Moratorium is applicable, with a few exceptions[34], to credit transactions granted by:

i. Credit institutions, financial credit institutions, investment firms, financial leasing companies, factoring companies, mutual guarantee societies;

ii. Branches of credit and financial institutions operating in Portugal;

The Moratorium is comprised mainly of the following measures[35]-[36]:

i. **Prohibition to terminate, in part or in full, the credit lines contracted and the loans granted** in the amounts agreed as at 27 March 2020, for as long as the Moratorium is in force;

ii. **Extension, for a period equal to the duration of the Moratorium, of the deadlines of all bullet loans** that are in force on 27 March 2020, together with all their associated elements (including interest and guarantees, such as those provided through insurance or in negotiable instruments);

iii. **Suspension of principal, rent and interest payments due until the end of the Moratorium, in relation to credits with instalment payments of the principal or other pecuniary sums.** The payment schedule of principal, rent, interest, fees and other charges stipulated in the contract shall be automatically extended for a period of time equal to the suspension, in order to ensure that there are no charges other than

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[34] The Moratorium does not apply to (i) credit or financing for the acquisition of securities or of positions in other financial instruments; (ii) credit granted to beneficiaries of regimes, subsidies or benefits, including tax benefits, for the purpose of moving their registered offices or residence to Portugal, including for investment purposes (with the exception of citizens covered by *Programa Regressar*); or (iii) credit granted to companies by means of credit cards for personal use for managers, employees and other collaborators.

[35] In the case of loans with a financial collateral, this measure covers the debtor's obligations to restore maintenance margins as well as the creditor's right to trigger stop-loss clauses.

[36] The entities benefiting from the measures referred to in points ii. and iii. above may request, at any time, that only the principal repayments be fully or partly suspended.

those which may arise from the variability of the reference interest rate set out in the contract. All elements associated with the contracts covered by the measure, including guarantees, are also extended.

The extension of the deadline for payment of the principal, rent, interest, fees and other charges, under the measures referred to in points ii. and iii. above does not: (i) constitute breach of contract; (ii) trigger acceleration clauses or (iii) cause the ineffectiveness or termination of guarantees granted by the entities benefiting from the measures or by third parties, including the effectiveness of insurance, personal guarantees (*fiança*) and/or "*aval*". Interest shall continue to accrue during the extension period and will be capitalised with reference to the time at which they are due at the contractual rate in force.

In the case of loans granted on the basis of total or partial financing or guarantees from third parties located in Portugal, the Moratorium applies automatically, without prior authorisation from those entities, under the same conditions as those set out in the initial contracts, once the application for the Moratorium is submitted, as described below.

The extension of guarantees – including insurance and personal guarantees (*fiança* and/or *aval*) – under the Moratorium does not require any other procedure, opinion, authorisation or prior act by any other entity and is fully effective and enforceable against third parties. The respective registration, when necessary, shall be carried out by the creditor, based on the provisions of Decree-Law 10-J/2020, by submitting the application for the Moratorium, as described below, without any other document and regardless of the chain of title *(trato sucessivo*).

In the event of insolvency, PER (*Processo Especial de Revitalização*) or RERE (*Regime Extrajudicial de Recuperação de Empresas*) of the beneficiary, the Moratorium does not prevent creditor institutions from exercising all their rights.

The following types of debtors may benefit from the Moratorium:

i. **Companies** that meet the following cumulative requirements: (i) have their head office in Portugal; (ii) carry out an economic activity in Portugal; (iii) are deemed a micro, small or medium-sized enterprise pursuant to Recommendation 2003/361/EC of the

European Commission, or (regardless of their size) do not belong to the financial sector; [37] (iv) have no debt obligations towards the Tax and Customs Authority or the Social Security[38]; (v) are not insolvent and have not suspended or ceased payments; (vi) as at 18 March 2020, were not subject to any enforcement proceedings filed by any of the institutions granting the Moratorium; and (vii) as at 18 March 2020, were not in default for more than 90 days to the institutions that would grant the Moratorium or, alternatively, did not meet the materiality criteria set out in Notice 2/2019 of the Bank of Portugal (*Aviso do Banco de Portugal n.º 2/2019*) and in Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018.

[37] For these purposes, the following entities are deemed part of the financial sector: banks, other credit institutions, financial companies, payment institutions, electronic money institutions, financial intermediaries, investment firms, collective investment schemes, pension funds, securitisation funds, their management companies, securitisation companies, insurance and reinsurance undertakings and public bodies managing public debt at a national level, with a status, according to the law, equivalent to that of credit institutions.

[38] The debts incurred in March 2020 are not relevant for this purpose until 30 April 2020.

ii. **Individual entrepreneurs, private charitable institutions, non-profit associations and other social economy entities**[39] that meet the following cumulative requirements: (i) are domiciled or have their head office in Portugal; (ii) have no debt obligations to the Tax and Customs Authority or the Social Security; [40] (iii) were not insolvent and had not suspended or ceased payments as at 18 March 2020; (iv) were not (as at 18 March 2020) subject to enforcement proceedings filed by any of the institutions that would grant the Moratorium; and (v) were not (as at 18 March 2020) in default for more than 90 days to the institutions that would grant the Moratorium or, alternatively, did not meet the materiality criteria set out in Notice 2/2019 of the Bank of Portugal and in Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018.

iii. **Natural persons, in relation to home loans,** who meet the following cumulative criteria: (i) reside in Portugal; (ii) have no debt obligations to the Tax and Customs Authority or the Social Security;[41] (iii) were not insolvent and had not suspended or ceased payments as at 18 March 2020; (iv) were not (as at 18 March 2020) subject to enforcement proceedings filed by any of the institutions that would grant the Moratorium; and (v) were not (as at 18 March 2020) in default for more than 90 days to the institutions that would grant the Moratorium or, alternatively, did not meet the materiality criteria set out in Notice 2/2019 of the Bank of Portugal and in Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018; and (vi) meet at least one of the following requirements:

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[39] Social economy entities that meet the requirements set out in article 136 of the Mutual Associations Code (*Código das Associações Mutualistas*), approved in the annex to Decree-Law no. 59/2001, of 2 August, are not eligible for the Moratorium.

[40] The debts incurred in March 2020 are not relevant for this purpose until 30 April 2020.

[41] The debts incurred in March 2020 are not relevant for this purpose until 30 April 2020.

a. are in isolation, are ill or are taking care of children or grandchildren, as established in Decree-Law 10-A/2020; or

b. have suffered a reduction in their ordinary working hours or have their employment contracts suspended due to a business crisis; or

c. are registered as unemployed with the Institute for Employment and Vocational Training, I.P.; (*Instituto do Emprego e Formação Profissional, I. P.*); or

d. are eligible workers for the extraordinary support programme set up for self-employed workers whose economic activity has been reduced, under article 26 of Decree-Law 10-A/2020; or

e. are workers at an entity whose establishment or activity has been closed during the state of emergency.

The beneficiary must apply to the creditor for the Moratorium and include documentation proving that the beneficiary has no tax or social security debts. If the beneficiary meets the requirements, the creditor must implement the Moratorium within a maximum of five working days from the date of the submission of the relevant application. Otherwise, the creditor has up to three working days from the submission of the application to inform the beneficiary that it does not meet the requirements.

Those who apply for and benefit from the Moratorium without fulfilling the legal requirements, as well as persons that sign the required documentation (e.g. the application for the Moratorium), are liable for any damage caused due to false declarations and for the costs incurred in relation to the Moratorium, notwithstanding any criminal liability that may arise.

With regard to the information duties, the institutions must disclose and advertise the measures set out in Decree-Law 10-J/2020 on their websites and also through the other usual forms of contact with their customers. In addition, the institutions are also obliged to give full information on all the measures provided for therein, prior to any credit agreement being formalised whenever the customer is a beneficiary entity.

The Bank of Portugal has a duty to supervise and monitor the access to and the use of the Moratorium. The creditors' breach of the obligations provided for in Decree-Law 10-J/2020 or in the

regulations adopted by the Bank of Portugal to implement the Moratorium constitutes an administrative offence under article 210 of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law no. 298/92, of 31 December (*Regime Geral das Instituições de Crédito e Sociedades Financeiras*).

The financial exposures covered by the Moratorium shall be reported to the Central Credit Register of the Bank of Portugal (*Central de Responsabilidades de Crédito do Banco de Portugal*).

Recently, and following the set of guidelines issued by the European Banking Authority ("**EBA**") on public and private moratoriums applicable to credit transactions in the context of the current pandemic, on 7 May 2020, Notice 2/2020 of the Bank of Portugal (*Aviso do Banco de Portugal n.º 2/2020*) ("**Notice 2/2020**") entered into force. Notice 2/2020 sets out the information duties institutions have towards their customers for (i) credit transactions covered by the Moratorium (provided for in Decree-Law 10-J/2020) and (ii) other credit transactions not covered by the Moratorium (as defined above) and which are subject to a private moratorium, approved in line with the EBA guidelines.

Notice 2/2020 applies to the following institutions: (i) credit institutions; (ii) financial credit companies; (iii) investment companies; (iv) financial leasing companies; (v) factoring companies and mutual guarantee companies; and (vi) branches of credit institutions and financial institutions operating in Portugal which enter into credit transactions covered by the Moratorium or a private moratorium.

The above institutions must: (a) make the information on the moratorium available by posting it in a prominent place, at their respective information points, on their websites' home pages and on any online banking and mobile banking applications; and (b) disclose the information on the moratorium in such a way that clearly identifies the type of moratorium to which it relates.

In particular, the information on the moratorium, whether public (the Moratorium as defined above) or private, must include at least the following:

a. The credit transaction that is covered;

b. The potential beneficiaries and respective eligibility requirements;

c. The moratorium adherence procedure, including, in particular, the following information: (i) how to submit the application; (ii) the documentation to be submitted, if applicable; (iii) in the case of a private moratorium, who should submit the application for credit transactions with more than one holder; (iv) how the customer will be notified of the granting or not of the moratorium; and (v) the term within which to notify the customer whether or not the moratorium has been granted;

d. The types of moratorium and measures covered by the moratorium;

e. The duration of each moratorium, with an express reference to the start and end of the moratorium period, as well as to the possibility of the customer requesting the early termination of the moratorium, where applicable;

f. How the granting of the moratorium will affect the instalments and the term to repay credit;

g. In the case of a private moratorium, the impact of the moratorium on security granted in connection with credit transactions; and

h. The deadline set to apply for each moratorium.

Institutions must also fulfil the following duties:

i. Institutions which have entered into a private moratorium must prepare a document for bank customers to adhere to, which clearly sets out the measures covered by the moratorium and their respective consequences, including whether customers have several options to choose from.

ii. Sending all customers which have entered into credit transactions covered by the Moratorium or who have adhered to the private moratorium, a communication by email, short message service (SMS) or any other usual means used with each customer, informing them of the existence of the abovementioned moratorium and where the customer may obtain additional information.

iii. After the customer has submitted the application for a private moratorium, the institution must inform the customer that the moratorium has been granted or, if the customer does

not meet the required conditions, the reasons why the moratorium application has been rejected. This communication must:

a. be made in a durable medium, by the means usually used to communicate with each customer for the credit transaction in question;

b. include information on how the granting of the moratorium will affect the credit transaction.

iv. In cases where any security is associated with the credit transaction for which a moratorium has been applied, institutions must inform the guarantor of its granting. This must be done by means of a communication in a durable medium, which specifies the legal and contractual consequences that the granting of the moratorium might have on the guarantor.

v. Clarifying any doubts raised by customers by:

a. making available, in an easily and permanently accessible location, such as on their respective websites, an FAQ section on the granting of the Moratorium and the private moratorium to which the customers have adhered; or

b. offering a customised live chat service or customer services telephone number.

On 22 May 2020, Bank of Portugal Instruction no. 13/2020, of 21 May 2020 ("**Instruction 13/2020**"), entered into force, which sets out an obligation for the relevant institutions to communicate to the Bank of Portugal information on the implementation of the Moratorium regulated under Decree-Law 10-J/2020 and of the voluntary moratoriums to which institutions have adhered under the EBA Guidelines on public and private moratoriums applicable to credit operations in the context of the COVID-19 pandemic ("**private moratoria**"), as well as the content and form of such communications. Institutions must also notify the Bank of Portugal of any credit agreements in their portfolios that fall within the scope of the public Moratorium and private moratoriums.

For the purposes of Regulation 13/2020, "institutions" are: any credit institutions, credit financial companies, investment companies, financial leasing companies, factoring companies, mutual guarantee companies, as well as branches of credit institutions and financial institutions operating in Portugal.

MEASURES IMPLEMENTED BY THE PORTUGUESE BANKS

In response to the COVID-19 pandemic, some banks have announced several measures to support companies and individuals, including: (i) the elimination or suspension of the fees charged to use electronic payment terminals; (ii) the extension and simplification of access to bank digital and automated channels[42]; (iii) the availability of the abovementioned credit; and (iv) renegotiation of loan terms and conditions, in particular by granting grace periods of up to 12 months for the repayment of the principal in loans granted to companies, namely in financial leases (or the simplification of the procedures to extend the agreed maturity).

PERSONAL GUARANTEES FROM THE STATE

Upon authorisation by the Minister of Finance, personal guarantees may be granted by the State and by other legal persons governed by public law, within the maximum limits for granting personal guarantees provided for in the State Budget Law, namely to guarantee any type of credit or other financial transaction to ensure liquidity or for any other purpose to companies, private social solidarity institutions, non-profit associations and other social economy entities or any other entities with registered offices in the European Union, including European institutions, instruments or mechanisms.

The request for a state guarantee must be addressed to the Minister of Finance and submitted to the General Directorate of the Treasury and Finance, together with the essential elements of the transaction to be guaranteed, in particular the amount and the term of the guarantee.

The request shall be subject to the favourable opinion of the member of the Government from the area of activity of the entity benefiting from the guarantee, and shall focus on the framework of the transaction within the Government's policy response to the national economic emergency situation due to the COVID-19 pandemic, the assessment of the importance of the beneficiary entity for the

[42] The charging of fees in the situations provided for in Law no. 7/2020 of 10 April is suspended, with effect from 11 April 2020.

national economy, as well as the prospect of economic viability of the entity in question and the explicit need for a personal guarantee from the State.

Beneficiary entities must regularly send to the General Directorate of the Treasury the elements required to monitor the transactions that are the object of the guarantee and details of the circumstances that prevent them from meeting the guaranteed obligations in a timely way, as soon as they become aware of them. The provisions of Law 112/97 of 16 September, in its current version, shall apply, with the necessary adaptations, to the granting of personal guarantees by the State, except for the provisions that are incompatible with the exceptional and temporary circumstances, in particular articles 9, 13, 14, 16 and 19.

GRANTING OF MUTUAL GUARANTEE

Mutual guarantee societies may grant guarantees to beneficiaries or other legal entities that do not qualify as shareholders, provided that such guarantee is specifically authorised by the Government members responsible for economy and finance, and provided that the financial products subject to such guarantees are identified.

Decree-Law no. 211/98, of 16 July, in its current version, is applicable to these guarantees. The procedures set forth therein apply, with the necessary adaptations and taking into account the context and purpose of the guarantees. These guarantees are covered by the Mutual Counter-Guarantee Fund (*Fundo de Contragarantia Mútuo*), pursuant to Decree-Law no. 229/98, of 22 July, in its current version.

INSURANCE SECTOR

The Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões* - "**ASF**") has published Circular 2/2020 which sets out recommendations and measures to be considered by insurance companies.

The ASF recommends that insurance companies, if necessary, adapt their corporate governance in order to mitigate the risks arising from the current operational constraints on business activities and

to ensure the continuation of operations (including services provided by external subcontractors or suppliers).

The ASF also recommends that the necessary measures be taken in order to restrict all actions under the capital management policy that involve the decapitalisation of companies, with an emphasis on the distribution of dividends and intra-group financing.

At a prudential level, and given the risk of a deterioration in their financial conditions that could lead to a breach of the solvency capital requirements in financial year 2020, even though this risk may not be not immediate, insurance companies will not pay dividends as this could jeopardize their position or seriously hinder their sound and prudent management.

From a conduct/behavioural point of view, insurance companies must take into account that many of their clients are currently extremely vulnerable due to the COVID-19 pandemic, and therefore, notwithstanding the applicable legislation, should be flexible in dealing with the situations they are faced with and seek to meet the clients' needs.

Among other recommendations, in the case of redemption requests for life business products (*produtos do ramo Vida*), insurance companies should promote prior contact with the policyholders of such contracts, providing them with a full explanation of the current exceptional situation, highlighting, in particular, any penalties envisaged.

Customers should also be provided with clear and timely information on the contractual terms of their products, in particular with regard to changes resulting from the COVID-19 pandemic, as well as the scope of coverage, paying special attention to excluded cases in order to ensure that the equal treatment of similar cases is promoted and that customers are aware of the scope of coverage of their policies.

It should also be highlighted that insurance companies should disclose their contingency plans, namely on their website or on the website they use, in order to inform customers of the measures taken that may have an impact on their contractual relationships and services provided.

Another measure now in place is a 20-working day extension of the deadline for insurance companies to respond to complainants and to the ASF for complaints submitted to them via the ASF.

A final comment on the flexibility of deadlines related to various reporting obligations, following the publication of the "EIOPA Recommendations on supervisory flexibility regarding deadlines of reporting and public disclosure for insurers" is set out below:

The ASF will request insurance companies and insurance groups to report a set of information periodically so that they can monitor the evolution of the financial situation in the current framework, as well as various aspects of market conduct.

Nevertheless, insurance companies and insurance groups must report immediately to the ASF if they identify any significant difficulties in their activity or in complying with the legal and regulatory requirements in force, in particular:

a) Serious disruptions to their business;

b) Circumstances that have an impact on their financial, liquidity or solvency situation;

c) Circumstances that have a significant negative reputational impact for the insurance company, in order to assess the need to adopt stability protection measures, namely in terms of public communication;

d) Other situations to identify when the ASF communicates the reporting obligations (regular and conditional) to be carried out.

Additionally, within the context of the implementation of the flexibility measures introduced in the insurance sector, the ASF has published: (i) Circular-Letter 3/2020, of 1 April, on the flexibility measures and recommendations applicable to insurance distributors; and (ii) Circular-Letter 4/2020, of 2 April, on the flexibility measures and recommendations applicable to entities that manage pension funds.

With regard to the measures applicable to insurance distributors, we would like to point out the following: (i) flexibility of the deadlines to reply to requests presented by the ASF to the insurance distributors, except for the specific requests relating to the current exceptional situation; (ii)

suspension/cancellation of on-site supervision actions, scheduled for the next months; and (iii) flexibility of the reporting deadlines set out in the Regulation (*Norma Regulamentar*) 15/2009-R, of 30 December, for insurance and reinsurance intermediaries.

With regard to the measures applicable to entities that manage pension funds, we would like to point out the following: (i) flexibility of the deadlines to reply to requests presented by the ASF to entities that manage pension funds, except for the specific requests relating to the current exceptional situation; (ii) flexibility of the reporting deadlines on the information set out in Regulation (*Norma Regulamentar*) 18/2008-R, of 23 December (NR 18/2008-R), and Regulation 8/2016-R, of 16 August (NR 8/2016-R); and (iii) the extraordinary reporting that the ASF will request from the managing entities, which will cover the financial, liquidity and solvency situation of the pension funds, with emphasis on the assessment of the impact of the current exceptional circumstances of the financial markets on pension funds and the interests of the beneficiaries and participants covered by them.

In relation to the impact of COVID-19 on the insurance activity, in particular with regard to the temporary reduction of risk in insurance contracts due to the significant reduction or suspension of activity, Decree-Law 20-F/2020 of 12 May approved an exceptional and temporary regulation for the payment of insurance premiums ("**Decree-Law 20-F/2020**").

Decree-Law 20-F/2020 provides, among others, the following measures: (i) making the premium payment scheme more flexible by allowing parties to agree on a scheme that is more favourable to the policyholder[43]; (ii) maintaining compulsory insurance cover for 60 days in the event of the non-payment of the respective premium, unless the policyholder gives at least ten days' notice of the decision not to maintain the insurance; additionally, the amount of the outstanding premium may be deducted from any cash benefit due by the insurer to the policyholder; and (iii) for insurance covering

[43] In accordance with Article 2(2) of Decree-Law 20-F/2020, the insurer and the policyholder may agree to pay the premium at a date later than the commencement of the risk cover, to refrain from automatically terminating or not extending in the event of non-payment, to divide the premium into instalments, to extend the validity of the insurance contract, to temporarily suspend payment of the premium and to temporarily reduce the amount of the premium in line with the temporary reduction in the risk.

risks related to commercial activity, if there is a reduction/elimination of the risk covered, as a result of the COVID-19[44] pandemic response measures, these circumstances must be reflected in the premium of the respective contract or through the application of a premium instalment scheme for the current annuity at no additional cost.

ANTI-MONEY LAUNDERING AND TERRORIST FINANCING

The Portuguese Securities Market Commission ("**CMVM**") has decided to extend for three months the deadline for compliance with the reporting obligation provided for in article 21 of the CMVM Regulation 2/2020, on the prevention of money laundering and terrorist financing.

Given that the current situation encourages opportunistic illegal conducts, such as engaging in fraudulent investment schemes and fundraising based on false information, the CMVM stresses the importance of the assessment by the entities under its supervision of the concrete risks of their activity and of the implementation of procedures and control measures, on a risk-based approach, in accordance with the recommendations of the Financial Action Task Force (*Grupo de Ação Financeira - GAFI*) and which are also foreseen in Law 83/2017, of 18 of August, which establishes measures to prevent money laundering and terrorist financing.

On 16 April 2020, the Bank of Portugal published Circular Letter CC/2020/00000023 to remind financial institutions that despite the current extraordinary circumstances they must continue to implement systems and effective controls to ensure that the financial system is not used for money-laundering and terrorist-financing purposes.

In particular, the Bank of Portugal points out that financial institutions: (i) should remain alert to emerging money-laundering and terrorist-financing risks and to the characteristics of this phenomenon, adjusting, where necessary, their risk assessments in accordance with any new realities, and in any case ensuring their ability to detect and report suspicious transactions; (ii)

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[44] Under Article 3(3) of Decree-Law 20-F/2020, a substantial reduction in activity is deemed to exist when the policyholder is experiencing a business crisis, including when it experiences a sudden drop in turnover of at least 40%.

should be aware that the current circumstances are appealing to criminal individuals and organisations, particularly considering that given the current scenario they will likely assume that resources usually used for the prevention of money laundering and terrorist financing will be reallocated; (iii) should continue to monitor transactions, paying particular attention to unusual or suspicious patterns, both in customer behaviour and in their respective financial flows; and (iv) should implement appropriate measures, based on risk analysis, to establish the origin of unexpected financial flows from customers in sectors that have suffered or will suffer due to the economic slowdown and the mitigation measures applied in response to COVID-19.

The Bank of Portugal's Circular-Letter of 16 April 2020, is in line with, and financial institutions must consider its content together with, the content of the guidelines issued by the European Banking Authority (EBA) in its ***Statement on actions to mitigate financial crime risks in the COVID-19 pandemic*** (of 31 March 2020) and by the Financial Action Task Force (FATF) in its ***Statement by the FATF President: COVID-19 and measures to combat illicit financing*** (of 1 April 2020).

Procedural law matters

In order to adapt the activities of the courts and other judicial and administrative bodies to the current public health emergency and to prevent and contain the spread of COVID-19, a wide variety of measures have been adopted at both the national and international level which affect the performance of procedural acts (*atos*) and steps in proceedings and procedures.

Below is a summary of the measures adopted. It is important to note that, at present, a law which will amend these measures is pending publication. Therefore, it is possible for the measures described below to be amended in the short term.

This measures are briefly described below.

PORTUGAL

- **Proceedings and procedural deadlines**

Article 7 of Law 1-A/2020, amended by Law 4-A/2020, has established a special regime suspending deadlines and procedural steps, according to which:

a) deadlines for the performance of procedural acts in non-urgent proceedings and procedures have been suspended since 9 March 2020;

b) deadlines for the performance of procedural acts in urgent proceedings and procedures not involving fundamental rights, at-risk minors or urgent educational-guardianship proceedings and hearings of imprisoned defendants were suspended between 9 March 2020 and 6 April 2020, continuing to be processed from this last date, without suspension or interruption of deadlines;

c) deadlines for the performance of procedural acts in urgent proceedings and procedures concerning fundamental rights, at-risk minors or urgent educational-guardianship proceedings and hearings of imprisoned defendants continued to be processed, without suspension or interruption of deadlines.

Law 16/2020 revoked article 7 of Law 1-A/2020, as amended by Law 4-A/2020, ceasing the suspension of non-urgent proceedings and procedural deadlines referred to in paragraph a) above (see article 8 of Law 16/2020). Hence, on 3 June 2020, deadlines for the performance of procedural acts in non-urgent proceedings and procedures have resumed their course.

However, pursuant to article 6-A(6) of Law 1-A/2020, as amended by Law 16/2020, the following remain suspended during the course of this exceptional and transitional period:

a) Acts to be performed in enforcement or insolvency proceedings related to the execution of procedural steps for the judicial delivery of the family residence;

b) Eviction proceedings, special eviction procedures and proceedings for the delivery of leased property, when the tenant, by virtue of the final judicial decision to be rendered, may be placed in a vulnerable position due to lack of owner-occupied housing or for another compelling social reason.

On the other hand, under article 6-A(7) of Law 1-A/2020, as amended by Law 16/2020, the Court may suspend all acts to be performed in enforcement or insolvency proceedings regarding the sale or judicial delivery of property which is likely to cause detriment to the livelihood of the defendant or of the person declared insolvent, upon their request, provided that the suspension does not cause serious damage to the claimant's subsistence or a irreparable damage. The Court shall decide the suspension within 10 days, after hearing the parties.

Finally, under the terms of Decree-Law 10-A/2020, as of 9 March 2020 a declaration issued by a health authority attesting to the need for persons involved in proceedings to self-isolate due to the risk of COVID-19 contagion constitutes (i) grounds to allege that they have a justified impediment (*justo impedimento*), and (ii) grounds not to attend proceedings and procedural steps that must be performed in person within the scope of proceedings, procedures and formalities. Additionally, as of 3 June 2020, the abovementioned declaration also constitutes grounds to allege a justified impediment (*justo impedimento*) to the performance of proceedings and procedural steps that can be performed remotely when the person does not have access to means of remote communication or is unable to perform them due to infection by COVID-19 (see article 14 of Decree-Law 10-A/2020, as amended by Law 16/2020).

- **Exceptional and transitional procedural regime for the performance of procedural steps that require the physical presence of the procedural actors**

Law 16/2020 has established an exceptional and transitional regime for the performance of procedural steps in proceedings and procedures pending before the judicial, administrative and tax courts, the Constitutional Court, the Court of Auditors and other judicial bodies, the arbitration courts, the Portuguese public prosecutor's office, justices of the peace (*julgados de paz*) alternative dispute resolution entities and tax enforcement bodies.

- **Trial hearings and other procedural steps involving the examination of witnesses**

The trial hearings and other procedural steps which involve the examination of witnesses shall be performed in the following manner (see article 6-A of Law 1-A/2020, as amended by Law 16/2020):

a) In person and in compliance with the maximum number of people and other safety, hygiene and health rules defined by the health authorities; or

b) By appropriate means of remote communication, notably teleconference, video calls and other equivalent means, when they cannot be performed in person and if it is possible and appropriate, in particular if it does not harm the purposes of justice.

Without prejudice of the foregoing, the making of statements by the defendant (*arguido*), as well as the testimony of witnesses or a party shall be made in a court, except if:

a) The parties agree otherwise;

b) Parties, witnesses or representatives over the age of 70 or who are at risk of illness intervene, who may intervene remotely from their legal or professional domicile.

On the other hand, the defendant (*arguido*) shall be guaranteed attendance at the pre-trial debate and at the trial session in which statements by the defendant (*arguido*) or the co-defendant (*co-arguido*) and the testimony of witnesses take place.

- **Other procedural steps that require the physical presence of the parties, their representatives and other actors**

Other procedural steps that require the physical presence of the parties, their representatives and other actors (for example, in case of preliminary hearings) may be performed:

a) By appropriate means of remote communication, notably teleconference, video calls or other equivalent; or

c) In person, when they cannot be performed by means of remote communication, in compliance with the maximum number of people and other safety, hygiene and health rules defined by the health authorities.

- **Limitation and expiration periods**

Article 7(3) and (4) of Law 1-A/2020, as amended by Law 4-A/2020 established the suspension of limitation and expiration periods for all kinds of proceedings and procedures as of 9 March 2020.

Law 16/2020 revoked article 7 of Law 1-A/2020, as amended by Law 4-A/2020, ceasing the suspension of the abovementioned limitation and expiration periods (see article 8 of Law 16/2020).Therefore, on 3 June 2020, the limitation and expiration periods which had been suspended by virtue of Law 1-A/2020 resumed their course.

Additionally, pursuant to article 6 of Law 16/2020, the limitation and expiration periods which are no longer suspended by virtue of such law are extended by the period of time in which they were suspended, that is, 86 days.

Without prejudice to the foregoing, under paragraphs d) and e) of article 6-A(6) of Law 1-A/2020, as amended by Law 16/2020, the following remain suspended during the exceptional and transitional regime:

a) limitation and expiration periods concerning the procedures and proceedings mentioned in paragraphs a) to c) of article 6-A(6) of Law 1-A/2020, as amended by Law 16/2020 (i.e., the deadlines for application for a declaration of insolvency, acts to be performed in enforcement proceedings, eviction procedures, etc., which also remain suspended in this period);

b) limitation and expiration periods concerning proceedings whose procedural steps require the physical presence of the parties, their representatives and other actors and cannot be performed under the terms set out in Law 16/2020.

Finally, the maximum limitation and expiration periods concerning the limitation and expiration periods that remain suspended according to paragraphs d) and e) of article 6-A(6) of Law 1-A/2020, as amended by Law 16/2020, are extended for the period of time of duration of the suspension.

- **Administrative deadlines**

Administrative deadlines that were suspended under Law 1-A/2020, as amended by Law 4-A/2020, are considered to have expired (see article 5 of Law 16/2020):

a) On the 20th (twentieth) business day after the entry into force of Law 16/2020, in other words, 3 July 2020;

b) On the date on which they would originally fall due, if they fell due after 3 July 2020.

The present regime is not applicable to the deadlines for the performance of acts in the administrative phase of administrative offences matters, which resume their course as described below.

- **Administrative offences, sanctions and disciplinary procedures**

Under Law 1-A/2020, deadlines for administrative offences, sanctions and disciplinary procedures, including the judicial challenge of final or interlocutory decisions, that are or will be pending before direct, indirect, regional or local public authorities or any other administrative entities – in particular independent administrative entities, including the Competition Authority, the Insurance and Pension Funds Supervisory Authority, the Bank of Portugal and the Securities Market Commission, as well as public professional associations – were suspended between 9 March 2020 and 2 June 2020.

With the revocation of article 7 of Law 1-A/2020, as amended by Law 4-A/2020, deadlines in administrative offences, sanctions and disciplinary procedures have resumed their course on 3 June 2020, with the special maturity regime set out in article 5 of Law 16/2020 not being applicable.

- **Acts to be performed before the National Institute of Industrial Property**

Until 30 June 2020, all acts in relation to the National Institute of Industrial Property must be performed *online*, through its website. The notifications of any actions or steps taken by the Institute will be issued by e-mail to the addresses indicated by the interested parties in previous stages of the proceedings (articles 14 and 15 of Decree-Law 16/2020, of 15 April).

- **Service and notifications**

Law no. 10/2020, of 17 April, set forth an exceptional and temporary regime regarding the formalities of service and notification provided for in procedural laws, taking into account the epidemiological situation caused by the SARS-CoV-2 coronavirus and the COVID-19 disease.

Until this exceptional situation ends, the collection of signatures on the delivery of registered mail is suspended and is replaced by verbal identification and collection of the citizen's card number, or any other suitable means of identification, upon presentation of the same and apposition of the date on which the collection was made. The same will apply to service and notifications made by personal contact.

In the event of refusal to submit and provide the data referred to in the preceding paragraph, the postal service distributor draws up a note of the incident in the letter or acknowledgment of receipt and returns it to the sending entity. Such certification shall count as service or notification.

Service and notifications performed by registered letter with acknowledgment of receipt are deemed to have been made on the date the citizen's card number or any other legal means of identification is collected.

THE EUROPEAN UNION

On 19 March 2020, 31 March 2020, 2 April 2020, 23 April 2020, 5 May 2020, 15 May and 25 May, the Court of Justice of the European Union (the "**CJEU**") and the General Court of the European Union (the "**GCEU**") published official information in which they clarified that judicial activities shall

continue, although priority will be given to cases that are particularly urgent (e.g. urgent proceedings, expedited proceedings and interim proceedings).[45]

With regard to deadlines and hearings before the CJEU, it has been clarified that (i) all deadlines prescribed in ongoing proceedings − with the exception of cases that are particularly urgent − are extended by one month[46], (ii) until further notice, unless otherwise stated, the deadlines that are to be fixed by the registry shall also be increased by one month and (iii) hearings, that had been suspended with effect from 16 March 2020, were resumed from 25 May 2020. Although all necessary measures are being taken to ensure that those hearings take place under optimal conditions from both a logistical and sanitary perspective, it cannot be ruled out that some of those hearings will have to be replaced with questions to the parties for a written response.

Additionally, and of particular importance, is the fact that the CJEU has clarified that deadlines, including for the initiating of proceedings and lodging of appeals with the CJEU continue to run and parties are required to comply with those deadlines; this is without prejudice to the fact that, in the event it is impossible to do so, parties may claim the existence of unforeseeable circumstances or force majeure to justify the impossibility of performing the formalities by the deadlines in question.

With regard to deadlines and hearings before the GJEU, has been clarified that (i) deadlines continue to run and the parties are required to comply with those deadlines; where it is possible for deadlines to be extended, it is for a party seeking an extension to make a request in good time, so that the Court may give a ruling on that request; (ii) hearings, that had been suspended with effect from 16 March 2020, were resumed from 25 May 2020. However, whether hearings effectively

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[45] Available in https://curia.europa.eu/jcms/jcms/P_97552/en/.

[46] Those time limits shall expire at the end of the day which, in the following month, is numbered the same as the day on which the time-limit should have expired or, if that day does not exist in the following month, at the end of the day of the last day of that month.

resume and are conducted remains dependent on the decisions taken by the national authorities in order to combat transmission of the virus.

THE EUROPEAN COURT OF HUMAN RIGHTS

On 16 March 2020, the European Court of Human Rights (the "**ECHR**") published official information in which it indicated that the essential activities of the Court would, in principle, be maintained, with a special emphasis on priority cases. Procedures have been adopted for the examination of urgent requests for interim measures, submitted under article 39 of the Rules of the ECHR.

Public access to the premises of the ECHR has been restricted and hearings scheduled for March and April have been cancelled until further notice.

The six-month deadline for the submission of applications, established by article 35 of the European Convention of Human Rights, has been exceptionally extended for a one-month period, effective as of 16 March 2020. This period has now been extended to three months.

Deadlines set in ongoing proceedings shall be extended for a one-month period, effective as of 16 March 2020. This period has also been extended to three months.

The current constraints on the workings of the ECHR shall be constantly under review, depending on the evolution of the health crisis.

Arbitration matters

Given that arbitral tribunals face the same types of difficulties as judicial courts, the special regime suspending deadlines and procedural steps approved by Law 1-A/2020, as amended by Law 4-A/2020, also applied to arbitral proceedings.

As mentioned in the preceding section, Law 16/2020 revoked article 7 of Law 1-A/2020, as amended by Law 4-A/2020, ceasing the suspension of non-urgent proceedings and procedural deadlines, including in arbitral proceedings. Hence, on 3 June 2020, deadlines for the performance of procedural acts in arbitral proceedings have resumed their course.

Insolvency law and business recovery matters

Law 1-A/2020, as amended by Law 4-A/2020, adopted the following provisions regarding insolvency and business recovery:

i. The duty of a debtor to file for insolvency – set forth in article 18 of the Insolvency and Company Recovery Code (*Código da Insolvência e Recuperação de Empresas*) – was suspended on 9 March 2020.

ii. The deadlines in urgent proceedings – which include insolvency proceedings, PER (*processo especial de revitalização*) and PEAP (*processo especial para acordo de pagamento*) – were suspended between 9 March and 6 April[47].

iii. The suspension of the deadlines in urgent proceedings was lifted on 7 April 2020.

Law 16/2020 has formally repealed Laws 1-A/2020 and 4-A/2020 which established the three provisions outlined above, but has essentially adopted the same provisions along with two new ones aimed at protecting vulnerable debtors. The provisions are as follows:

i. The duty of a debtor to file for insolvency – set forth in article 18 of the Insolvency and Company Recovery Code – is suspended.

ii. Urgent proceedings – which include insolvency proceedings, PER and PEAP – are to be processed without any suspension or interruption of deadlines, acts or procedural steps, save for cases governed by the specific provisions regarding trial hearings, witness depositions and procedural steps which require the physical presence of the parties, as set out in the chapter above regarding procedural law matters.

[47] Despite this, in view of the uncertainties that may arise when applying this rule to urgent proceedings, it is recommended that interested parties request that the court rule on whether the relevant deadline was suspended between 9 March and 6 April 2020.

iii. Any procedural steps in insolvency proceedings relating to the delivery of a property that is the debtor's permanent place of residence are suspended.

iv. Any procedural steps in insolvency proceedings relating to the sale or delivery of property that may be detrimental to the debtor's subsistence, provided that the suspension does not cause irreparable damage, are suspended. The suspension must be requested by the debtor and the court has ten days to issue its decision after hearing the parties involved.

The measures described in the previous paragraph entered into force on 3 June 2020 and shall remain in force for the duration of the current "*exceptional situation created by the need to prevent, contain, mitigate and treat COVID-19*".

From a practical standpoint, the processing of insolvency proceedings, PER and PEAP by the courts has slowed down considerably since March 2020. However, the courts are now gradually picking up the pace and returning to normal operations.

Capital markets matters

The declaration of the state of emergency and the adoption of exceptional measures to contain the spread of COVID-19 are also reflected in the domain of public companies and of the Portuguese capital markets, thus triggering a series of legislative measures, decisions and recommendations, in particular in relation to (i) general meetings, (ii) reporting obligations of public companies, (iii) short-selling and (iv) administrative deadlines.

GENERAL MEETINGS

Please see the section regarding **corporate law matters**.

REPORTING

- **Information on the impact of COVID-19 on public companies**

With regard to the reporting of information by public companies, the main piece of regulation to note is the decision of the CMVM (Portuguese Securities Market Commission) of 20 March 2020. The CMVM determined that issuers must, in accordance with the rules on market abuse, disclose, as soon as possible, all relevant information on the impact of COVID-19 on their business, financial situation and economic performance.

The financial reports – in particular, the 2019 annual financial report (if it has not yet been finalised) or, in any case, when reporting interim information – should also reflect both the current and potential impact of COVID-19, determined, to the extent possible, on the basis of a quantitative and qualitative assessment.

This measure follows the recommendation published by the European Securities and Markets Authority ("**ESMA**") on 11 March 2020 (see below).

- **Other aspects**

In addition to the need for specific reporting on the impact of COVID-19, the CMVM:

iv. Clarified that business continuity plans should ensure the capacity to comply with all legal and regulatory duties, in particular, reporting information and safeguarding investors' rights, including the provision of information to investors and the registration of orders received, whether by telephone or other phonographic means[48];

v. Reinforced the obligations to report information to the CMVM that is critical to the evaluation of the consequences of the circumstances arising from COVID-19, namely by increasing the frequency of some reporting obligations, especially in the scope of asset management, in which case daily information is required; and

vi. Made the reporting obligations of investment firms and other entities obliged to report to the repositories of securities financing transactions more flexible, adopting a risk-based and proportional approach, in line with what had been decided by ESMA (see below).

SHORT-SELLING – REPORTING

On 16 March 2020, ESMA published a decision that requires investors to report to national authorities net short positions in shares listed on regulated markets in the European Union when they reach or exceed the threshold of 0.1% of share capital.

The decision was adopted in response to the ability of short-selling to increase share price volatility. The measure is immediately applicable, and therefore implies the obligation to report the relevant net short positions as at the close of 16 March 2020 trading session and for the subsequent three months.

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[48] The CMVM also announced that it had decided to monitor the operation of the business continuity plans of the entities under its supervision, taking into account the existing constraints on employees travelling to their workplaces, as well as the immediate communication to the CMVM of the activation of business continuity plans and of any situations in which such continuity might be at risk.

Bearing in mind the current circumstances and risks, the CMVM also decided, on 20 March 2020, *inter alia*, to constantly monitor the performance of investors with short positions in domestic issuers and, depending on the effects of these on the market and issuers, to assess on a permanent basis the possibility of introducing temporary prohibitions on the creation or reinforcement of short positions on shares traded in the domestic market, emphasising that measures of this nature are adopted in a coordinated and uniform manner at a European level.

However, the CMVM has not, to date, applied a measure restricting short sales, contrary to what has already happened in some European countries with regard to short positions on equity instruments (*e.g.* Spain, Italy, France and Belgium).

OTHER DECISIONS AND RECOMMENDATIONS

- **CMVM guidelines for investors**

In the context of the high uncertainty resulting from the pandemic, the CMVM has issued a set of guidelines to investors regarding open markets, participation in remote general meetings, precautions to be taken in the face of volatility in the markets, common behavioural biases in times of turbulence and ways to tackle the increased risk of fraud.

With reference to the prevention of fraudulent behaviour, the CMVM recommends in particular that investors (i) reject unsolicited offers, (ii) carefully analyse advertisements/proposals on social networks and check whether the entities indicated are registered on the CMVM's website, (iii) do not open e-mails or links from unknown sources and (iv) do not give their personal details to people and entities they do not know.

- **CMVM recommendation on the adoption of sustainability principles in financial information and in dividend, remuneration and operational resilience policies**

The CMVM has issued a recommendation to issuers of securities to adopt principles of transparency and sustainability in their reporting procedures, as well as in the distribution of dividends, remuneration and crisis management, taking into account the long-term interests of shareholders and other stakeholders. The CMVM further underlined the relevance of the quality of the information to be provided to the market by the boards of directors regarding the current and expected impact

of COVID-19 on its activities, based on perspectives that value the medium and long term and all stakeholders in the life of the company, aiming at ensuring the necessary operational and financial resilience in a context of increased risk.

The CMVM emphasised, in particular, that decisions with an impact on the conservation of a solid and resilient financing structure, including, for example, proposals for dividend distribution and shares buybacks, must be carefully weighed and clearly framed and justified in view of the medium-term challenges and risks of each issuer.

- **Extension of the deadline for submission of the internal control report to the CMVM**

The CMVM has decided to extend, until 30 September 2020, the deadline for submission of the evaluation report on the effectiveness of the compliance control system and of the risk management and internal audit service (internal control report), for the year 2019, as provided for in article 11-C of CMVM Regulation 2/2007, republished by CMVM Regulation 12/2018.

- **Clarification of ESMA by reference to issues related to the application of MiFID II requirements on the recording of telephone conversations**

With reference to the requirements of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II), more specifically, the recording of telephone calls, ESMA recognises that some scenarios may arise where the recording of the relevant telephone conversations may not be practicable.

In such exceptional scenarios, ESMA recommends that agents consider appropriate alternative measures to mitigate the risks related to the lack of recording (for example, the use of written minutes). In any case, these measures should be of a purely temporary nature and the recording of telephone conversations should be re-established as soon as possible.

- **CMVM recommendations on audit activity**

Taking into account the difficulties resulting from COVID-19 to close the financial statements and finalise the audits in progress (for example, due to the greater difficulty in accessing facilities or travel restrictions), the CMVM published a set of recommendations related to the audit activity. Thus, auditors shall:

i. Develop and adopt alternative and adequate procedures to collect evidence of the work performed and/or documents that are relevant to the audit reports, such as the use of digital remote work tools;

ii. Review the work assessment procedures for the statutory audit of the consolidated accounts of a group of entities, for the purpose of the audit carried out by the auditors of the group's components;

iii. Carry out an assessment of the audited entity's business continuity, as well as identify its economic prospects and the direct impact of the spread of COVID-19 on its activity;

iv. Collaborate with the audited entities in order to identify the impact and risks that the spread of COVID-19 may have on their activity and on the financial statements prepared or in progress (together with the audited entities, an assessment and confirmation must be made of the adequacy of their disclosures in the financial statements and measures implemented within the scope of the COVID-19 infection in order to be able to respond to the identified risks);

v. Reassess the main aspects of the audit work, following the rapid changes and impact of COVID-19 which may require increased availability by audited entities to provide information and audit evidence; and

vi. Communicate – under current conditions, by telematic means – with the audited entity, in order to ensure the best way to continue the audit work and maintain the quality of the services provided, even if this may require additional time.

- **ESMA public statement on the postponement of the reporting obligations related to securities financing transactions**

ESMA has issued a public statement on the postponement of the reporting obligations related to securities financing transactions under Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse, and under Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

- **ESMA recommendations for financial market participants (including, without limitation, the duty for issuers to disclose to the market any relevant information on the impact of COVID-19 as soon as possible)**

ESMA has published the following recommendations for financial market participants:

i. Business continuity planning: all financial market participants should be ready to apply their contingency plans, including deployment of business continuity measures;

ii. Market disclosure: issuers should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;

iii. Financial reporting: issuers should all provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalised or otherwise in their interim financial reporting disclosures; and

iv. Fund management: asset managers shall continue to apply the requirements on risk management and react accordingly.

Public law matters

Given the current public health emergency, with the aim of preventing and containing the spread of the SARS-CoV-2 coronavirus and COVID-19 disease, the Portuguese Government and other public entities have been approving several extraordinary measures that affect the rights, freedoms and guarantees of individuals, as well as their relationship with the public authorities.

The following is a summary of the measures adopted.

PUBLIC PROCUREMENT

- **Direct award procedure**

Under Decree-Law 10-A/2020, as amended by Law 4-A/2020, in order to facilitate the direct award procedure, a number of exceptions to the provisions of the Public Procurement Code ("**CCP**" for its Portuguese acronym), entering into force on 13 march 2020, are provided for:

i. It is recognised that the COVID-19 epidemic is an unforeseeable event, and therefore all contracting authorities are allowed to use the direct award procedure for the execution of public works contracts, contracts for the lease or purchase of movable property and contracts for the purchase of services, to the extent strictly necessary and for reasons of extreme urgency;

ii. Contracts concluded by direct award may be fully effective immediately after the award of the contract, without prejudice to the obligation to publish those contracts afterwards;

iii. Contracting authorities may resort to simplified direct award procedures (awarded upon signing of invoice) to conclude contracts for the purchase or lease of movable property and the purchase of services not exceeding the amount of EUR 20,000.00;

iv. The restrictions on the choice of invited entities will not apply to the procedures covered by this Decree-Law, that is:

   a. The limitations regarding the invitation of economic operators to whom the contracting authority has already awarded contracts under the direct award procedure in the current economic year and the two preceding economic years, in accordance with article 113(2) to (4) of the CCP; and

   b. Limitations relating to economic operators who have carried out works or supplied movable property or services free of charge to the contracting authority in the current economic year or the previous two economic years.

v. The contracts executed under this Decree-Law will not be subject to the prior consultation procedure, as provided for in article 27-A of the CCP.

- **Other exceptions**

Contracting authorities are allowed to make advance payments whenever it is a question of guaranteeing the provision, by the economic operator, of the goods and services mentioned and without the need to ascertain the assumptions set out in article 292 of the CCP (*e.g.* that the value of the advances does not exceed 30% of the contractual price and that security is given for an amount equal to or higher than the advances).

The entities covered by the National Public Procurement System are also exempt from obtaining prior authorisation for centralised purchases of goods or services covered by a framework agreement and made under the terms of this Decree-Law.

Finally, pursuant to this Decree-Law, the contracting authority may exempt the awardee from:

i. Submitting the qualification documents mentioned in article 81(1) of the CCP (i.e. the statement made in accordance with the annex II of the CCP, the criminal records certificates of the awardee and of the members of its board of directors, as well as the certificates of no debt before the Social Security and the Tax Authority);

ii. Providing the performance bond, regardless of the contract price.

- **Simplified direct award procedure**

  Decree-Law no. 18/2020 of 23 Abril added to Decree-Law 10-A/2020 (article 2-A) an exceptional regime of simplified direct award, aimed at simplifying the access to this procedure, effective as from 13 March 2020.

  The simplified direct award procedure may be exceptionally adopted:

  i. to the extent strictly necessary, for reasons of extreme urgency, duly reasoned;

  ii. regardless of the contractual price;

  iii. within the limits of the budget;

  iv. for the execution of contracts to acquire equipment, goods and services necessary for the prevention, containment, mitigation and treatment of infection by the COVID-19 disease, or related to it, for entities under the authority of the Minister for Health, namely:

    a. Personal protective equipment;

    b. Goods necessary to carry out COVID-19 tests;

    c. Equipment and materials for intensive care units;

    d. Pharmaceuticals, including medicinal gases;

    e. Other medical devices;

    f. Logistics and transport services, including air transport, related to the acquisition, whether against payment or free of charge, of the goods referred to in the preceding paragraphs, as well as to their distribution to entities under the authority of the Minister for Health or to other public entities or of public interest for which they are intended.

  For the simplified direct award procedures, the rules set out above will also apply, i.e.:

  i. The restrictions on the choice of invited entities do not apply;

  ii. Contracting authorities are allowed to make advance payments;

iii. Payments on account of orders in the national or international market are allowed and exempt from import formalities;

iv. Contracts entered into under this exceptional regime are not subject to the prior consultation procedure; and

v. Contracts entered into under this exceptional regime, whether in writing or not, are fully effective immediately after the contract is awarded, without prejudice to subsequently being made public.

Regarding the goods intended for entities under the supervision of the Minister for Health, this procedure may only be used by the DGS, the Central Administration of the Health System, I. P., the National Institute of Health Dr. Ricardo Jorge, I.P. and the Shared Services of the Ministry of Health, E. P. E. (SPMS, E. P. E.). Additionally, the DGS and the Central Administration of the Health System, I.P., are the competent authorities to determine, regardless of the amount, the expenditure on the reinforcement of equipment, goods and services necessary for the prevention, containment, mitigation and treatment of infection by SARS-CoV-2 and the COVID-19 disease.

Finally, the awards made under this simplified regime are communicated by the contracting authorities to the members of the Government responsible for the areas of finance and health and published on the public procurement portal, including the reasons for adopting this procedure.

The procedures carried out prior to the publication of Decree-Law no. 18/2020, of 23 April 2020, which have not complied, in whole or in part, with the regime provided by the original wording of Decree-Law 10-A/2020 for the direct award procedure, are considered, for all purposes, to have been carried out under the exceptional regime of simplified direct award introduced by Decree-Law no. 18/2020, of 23 April 2020.

PRIOR APPROVAL OF THE COURT OF AUDITORS

Under Law 1-A/2020, and from 12 March 2020, the following contracts are exempt from prior approval of the Court of Auditors:

i. Public works contracts, contracts for the lease or purchase of movable property and contracts for the purchase of services entered following a direct award procedure under the exceptional public procurement regime provided for in Decree-Law 10-A/2020; and

ii. Contracts entered into by entities of the Ministry for Health, the General Directorate of Reinsertion and Prison Services, the National Institute of Forensic Medicine and Forensic Sciences, the Hospital of the Armed Forces, the Military Laboratory of Chemical and Pharmaceutical Products and the Institute of Social Action of the Armed Forces.

The deadlines for pending preliminary examination proceedings or for proceedings that do not fall within the abovementioned exception are not suspended.

RESTORING THE FINANCIAL BALANCE AND COMPENSATION FOR "SACRIFICE"

Decree-Law no. 19-A/2020, of 30 April ("**Decree-Law 19-A/2020**"), established an exceptional and temporary regime in the context of the COVID-19 pandemic applicable to (i) long-term performance contracts to which the State or another public entity is a party (namely, public-private partnership contracts) ("**Long-Term Administrative Contracts**") and (ii) the compensation for "sacrifice" (i.e. a compensation due to a legal act that imposes a sacrifice to a private undertaking) (*indemnização pelo sacrifício*) caused by an act of the State or another public entity to prevent and address the pandemic.

Decree-Law 19-A/2020 is effective from 1 May 2020, with the exception of the cases referred to below, and will cease to be in force when the World Health Organisation determines that the epidemiological situation of SARS-Cov-2 and of the COVID-19 disease is no longer considered a pandemic.

- **Long-Term Administrative Contracts**

  – **Requests to restore the financial balance**

    i. From 3 April to 2 May 2020, the contractual clauses and provisions on the right to restore the financial balance or the right to seek compensation for breaches of use (e.g. traffic levels in a motorway) in Long-Term Administrative Contracts are suspended and private parties may not refer to them in relation to facts occurred during the aforementioned period.

    ii. In Long-Term Administrative Contracts that expressly provide for the right of the private contracting party or partner to be compensated for breaches of use, or in which a pandemic is provided for as a reason to give rise to a claim to restore the financial balance, such compensation or restoration in relation to the period from 3 April to 2 May 2020, may only be performed by extending the period for performance of the services or the duration of the contract and shall not imply, irrespective of legal provisions or contractual stipulation, a price review or the duty of the contracting authority or public entity to compensate the counterparty.

  – **Public-private partnership contracts in the road sector**

    i. The obligations of road concessionaires and sub-concessionaires under their contracts will be temporarily reduced or suspended, to be determined and implemented, as a matter of urgency, by the grantor or sub-grantor, taking into account, in particular, updated traffic levels consistent with the reality and the minimum services to be guaranteed in order to adequately safeguard road safety.

    ii. Whenever, in such cases, the remuneration of the concessionaires or sub-concessionaires derives from payments by the grantor or sub-grantor, the grantor or sub-grantor must also determine, on a unilateral basis, the reduction of the payments due, to the extent the obligations of the concessionaires or sub-concessionaires have been reduced or suspended.

– **Unilateral modifications**

Unilateral modifications in the scope of public-private partnership contracts or with effects applicable to such contracts that result from an act, measure, decision or other type of action attributable to the public partner, including one of a regulatory nature, adopted in the context of the COVID-19 disease pandemic, do not have to comply with any of the formalities imposed by article 20 of Decree-Law no. 111/2012, of 23 May, (namely, the need for a Resolution of the Council of Ministers). The provision regarding unilateral modifications has been in force since 12 March 2020.

– **Challenging of arbitration awards**

In relation to the disputes that may arise from the application of the provisions of Decree-Law 19-A/2020, paragraph 3 of article 185 A of the Code of Procedure in Administrative Courts is applicable, i.e. the arbitration award is still subject to appeal, with non-suspensive effects of the appealed award, to the Supreme Administrative Court:

i. When it is contrary to a decision, on the same question of law, rendered by one of the Central Administrative Courts or by the Supreme Administrative Court; and

ii. When the matter under examination is of fundamental importance, due to its legal or social relevance, or when the admission of the appeal is necessary to apply the law better, in accordance with article 150 of the Code of Procedure in the Administrative Courts.

- **Compensation for "sacrifice"**

No compensation for "sacrifice" will be paid for damage resulting from acts regularly performed by the State or another public entity, in the exercise of powers conferred by public health and civil protection legislation, or in the context of the state of emergency, to prevent and combat the COVID-19 pandemic, which is considered force majeure for these purposes.

ADMINISTRATIVE DEADLINES

Under Law 1-A/2020, as amended by Law 4-A/2020, administrative deadlines for acts to be performed by individuals and companies were suspended. This provision raised no doubts about the suspension of deadlines in administrative procedures.

However, it was not clear whether the non-procedural deadlines set out in administrative legislation or in administrative legislation or in administrative regulations and acts (e.g. deadline for compliance with a condition precedent, or a condition subsequent, set out in an administrative act), should be considered administrative deadlines for the purposes of their possible suspension. In these cases, we recommended that the possible suspension should be confirmed with the relevant public authority.

Pursuant to Law 4-A/2020, the administrative deadlines for private parties to perform acts in the scope of public procurement procedures (e.g. deadline for submission of proposals, deadline for submission of requests for clarification), which were suspended under the original wording of Law no. 1-A/2020, have resumed on 7 April 2020.

Law 16/2020 amended Decree-Law 10-A/2020 to stipulate that:

i. Twenty working days after the entry into force of Law 16/2020 (i.e. 3 July 2020) is the term for:

   a. Administrative deadlines which would have fallen during the above mentioned suspension regime;

   b. Administrative deadlines which would have fallen during the 20 working days after the entry into force of Law 16/2020;

ii. Administrative deadlines which would have fallen more than 20 working days after the entry into force of Law 16/2020, i.e. after 3 July 2020, will expire as per their original term.

iii. Limitation and prescription periods that cease to be suspended as a result of the amendments introduced by Law 16/2020 are extended by the period of time for which they were suspended.

This means that, apparently, administrative deadlines that were due to expire after 3 July 2020, and that are not considered limitation and prescription periods, were never suspended and maintain their original terms.

The provisions set out in (i) and (ii) above do not apply to administrative deadlines in administrative offence proceedings.

Decree-Law 10-A/2020 suspended the deadlines by which the authorities tacitly grant authorisations and licences requested by individuals and companies. Furthermore, deadlines which may result in tacit grants of authorisations or licences within the scope of an environmental impact assessment were also suspended, even when the procedure was not initiated due to a private undertaking's request. However, Decree-Law 20/2020 revoked this suspension and hence the terms for tacit grants began to run again on 2 May 2020.

According to the Code of Administrative Procedure, if a deadline falls on a day on which the relevant administrative service is not open to the public, or does not operate during the normal period, the deadline will be transferred to the following working day. Therefore, in the case of the administrative offices being closed, even if the deadlines were not suspended, the deadline is transferred to the following working day, that is, the next day the office is open again to the public.

SERVICES AND PUBLIC BUILDINGS

Under Decree-Law 10-A/2020, the access to services and public buildings may be limited by an order of a member of the Government responsible for public administration and for the area to which the service or building concerns.

Transport law matters

Given the current public health emergency, with the aim of preventing and containing the spread of the SARS-CoV-2 coronavirus and COVID-19 disease, the Portuguese Government and other public entities have been approving several extraordinary measures that affect international movement and means of transportation.

The following is a summary of the measures adopted.

REINTRODUCTION OF CROSS-BORDER CONTROLS

Under Resolution of the Council of Ministers no. 10-B/2020, of 16 March 2020, as amended by Resolution of the Council of Ministers no. 33-B/2020, of 30 April 2020, and by Resolution of the Council of Ministers no. 34-A/2020, of 13 May 2020 ("**Resolution of the Council of Ministers 10-B/2020**"), cross-border controls are reintroduced for people at land borders, airports and seaports with those States that are part of the convention implementing the Schengen Agreement.

The border control has been in force since 23:00 on 16 March 2020 and will remain in place until 00:00 on 15 June 2020, being subject to re-evaluation every 10 days and with the possibility of an extension.

The possibility of introducing sanitary controls and declarations having to be filled out when entering national territory is also provided for in the same Resolution.

LIMITATIONS ON INTERNATIONAL AIR TRANSPORT

Under the terms of Order no. 5503-C/2020, of 13 May 2020, all flights between Portugal and non-EU countries are prohibited, with the exception of:

i. Countries that are part of the Schengen Area (Liechtenstein, Norway, Iceland and Switzerland);

ii. Portuguese-speaking countries, with the exception of Brazil (only flights to and from São Paulo and Rio de Janeiro will be allowed); and

iii. The United Kingdom, the United States of America, Venezuela, Canada and South Africa, given the presence of Portuguese communities in these countries.

The abovementioned prohibition came into force on 18 April 2020 and will remain in force until 15 June 2020, with the following exceptions:

i. Flights to enable Portuguese nationals or holders of residence permits to return to Portugal;

ii. Flights to allow foreign nationals to return to their countries, provided they are carried out by the competent authorities of their respective countries, subject to request, prior agreement and to the principle of reciprocity;

iii. Flights for the exclusive transport of cargo and mail and technical stopovers for non-commercial purposes; and

iv. Flights for humanitarian or medical emergency purposes.

LIMITATIONS ON INTERNATIONAL MARITIME TRANSPORT

Under Resolution of the Council of Ministers 10-B/2020 and Order no. 5520-B/2020, of 14 May 2020, the following limitations regarding maritime transport are provided for:

i. The mooring of recreational craft and the disembarkation of persons (including cruises), with the exception of national citizens or Portuguese residents, is prohibited;

ii. Suspension of the granting of shore leave to crew members of all types of vessels in national ports, subject to occasional exceptions on the advice of health authorities.

LIMITATIONS ON INTERNATIONAL RAIL TRANSPORT

Under Resolution of the Council of Ministers 10-B/2020, international rail traffic is suspended, with the exception of freight transport.

LIMITATIONS ON INTERNATIONAL ROAD TRANSPORT

Under Resolution of the Council of Ministers 10-B/2020, there is a prohibition of road traffic across national land borders, with the exception of:

i. International freight transport;

ii. Carriage of cross-border workers and of seasonal workers with documented employment relationships; and

iii. Emergency and rescue vehicles and emergency services.

Authorised crossing points are established at the land border with Spain.

LIMITATIONS SPECIFICALLY APPLICABLE TO MOVEMENTS BETWEEN PORTUGAL AND SPAIN

Under Resolution of the Council of Ministers 10-B/2020, the following limitations specifically applicable to movements between Portugal and Spain are provided for:

i. Suspension of all flights between Spain and Portuguese airports or aerodromes, except for: (i) flights transporting cargo and mail and technical stopovers for non-commercial purposes, (ii) flights for humanitarian or medical emergency purposes and (iii) State aircraft, the Armed Forces and aircraft that are or will be part of the Special Rural Fire Fighting Service.

ii. Suspension of inland waterway transport between Portugal and Spain.

LIMITATIONS SPECIFICALLY APPLICABLE TO MOVEMENTS BETWEEN PORTUGAL AND ITALY

Under the terms of Order no. 3186-D/2020, of 10 March 2020, which has been successively extended, the latest extension being that contained in Order no. 5638-B/2020, of 20 May 2020, since midnight on 11 March that all airline flights, commercial or private, from Italy or to Italy from Portuguese airports or aerodromes are suspended. Unless a new extension is approved, this suspension ends at 00:00 of 15 June 2020.

The Order includes the following exceptions:

i. Flights of State aircrafts;

ii. Flights for transportation of cargo and mail only;

iii. Flights of a humanitarian or medical emergency nature;

iv. Technical stops for non-commercial purposes; and

v. Flights of aircrafts that are or will be part of the Special Rural Fire Fighting Service.

EXCEPTIONS TO INTERNATIONAL MOVEMENT RESTRICTIONS

Under Resolution of the Council of Ministers 10-B/2020, the following exceptions to the traffic limitations abovementioned are established:

i. The right of entry of nationals and holders of residence permits into their respective countries;

ii. Movement, for the purpose of reuniting family members;

iii. The access to health care facilities under bilateral agreements concerning the provision of health care;

iv. The right of citizens residing in another country to leave; and

v. The right of seasonal workers with documented employment relationships to enter and exit Portugal.

CAPACITY LIMITS IN PUBLIC TRANSPORT

Article 13-A of Decree-Law 10-A/2020, as amended by Decree-Law 20/2020, and Order no. 107-A/2020, of 4 May 2020, provide for measures to limit the capacity of collective passenger transport.

Accordingly, under those regulations, the capacity of collective passenger transport is reduced to two-thirds, specifically:

i. In land transport (e.g. bus, truck, underground, trams);

ii. In river and sea transport.

Additionally, in taxis and in transport in ordinary vehicles that use an electronic platform (e.g. Uber, Cabify) the front seats should be used only by the driver and the maximum passenger occupancy of the vehicles should not exceed two-thirds.

Transport authorities[49] must work together with their operators in order to adapt supply to demand and overall transport needs, whilst ensuring the continuity of this essential public service and compliance with the rules to protect public health.

Order 106/2020 of 2 May established capacity limits for air transportation, such limits having been revoked by Order 125/2020 of 25 May, which entered into force on 1 June 2020.

VEHICLE INSPECTION CENTRES

Decree-Law no. 21/2020, of 16 May 2020, amended Decree-Law no. 10-C/2020, of 23 March 2020, which had established exceptional and temporary measures to address the outbreak of the COVID-19 disease regarding periodic vehicle inspections. Thus, as of 18 May 2020, the following measures are in force:

i. Vehicle inspection centres may resume their activities provided they comply with the exceptional and temporary measures related to the COVID-19 pandemic in force from time to time, especially those in articles 10 to 15 of the rules on the state of calamity annexed to Resolution of the Council of Ministers 33-A/2020 or others that may replace them with identical content (currently provided for in articles 6 to 11 of Resolution of the Council of Ministers 40-A/2020), and in article 13-B of Decree-Law 20/2020, in its current wording, as well as the health and safety rules defined from time to time by the DGS.

[49] The transport authorities are those provided in Law no. 52/2015, of 9 June, as currently worded, e.g. municipalities, intermunicipal communities and the metropolitan areas of Lisbon and Porto.

ii. The deadline for motor vehicles and their lightweight or heavy trailers, which were due an obligatory periodic inspection between 13 March 2020 and 30 June 2020 has been extended for five months[50].

iii. The lack of an obligatory periodic inspection due during the period of exception (13 March 2020 to 30 June 2020) is not relevant for civil liability insurance purposes or for the right of recourse of the insurance company.

TRANSPORTATION OF HAZARDOUS WASTE

In order to combat the COVID-19 pandemic, several multilateral agreements have been signed by Portugal to waive the International Agreement on the Transport of Dangerous Goods by Road (ADR), thereby establishing:

(i) Driver training and safety advisor training certificates expiring between 1 March 2020 and 1 November 2020 will remain valid until 30 November 2020;

(ii) Periodic tank inspections and approval certificates for vehicles expiring between 1 March 2020 and 1 August 2020 will remain valid until 30 August 2020;

(iii) Transportable pressure containers (cylinders, tubes, pressure drums and cylinder racks) the periodical inspection validity of which has expired may continue to be loaded and transported until 31 August 2020.

[50] As vehicle inspection centres have re-opened, vehicles can undergo periodic inspections, including those for which the deadline has been extended. The three-month deadline established in article 7 of Decree-Law no. 144/2012 ,of 11 July, as currently worded, does not apply.

Tourism sector

Decree-Law no. 17/2020 of 23 April ("**Decree-Law 17/2020**") establishes temporary and extraordinary measures for the tourism sector in the context of the COVID-19 pandemic. The measures apply in particular to trips organised by travel agencies, the cancellation of hotel and local lodging reservations and to the relationships between travel agencies, tour operators and hotel/local lodging operators.

According to Decree-Law 17/2020, in relation to trips organised by travel agencies and scheduled for the period between 13 March 2020 and 30 September 2020 that do not take place or that are cancelled for reasons attributable to the COVID-19 pandemic, travellers are allowed to choose between (a) receiving a travel voucher for an amount equal to the price they paid for the trip, to be redeemed by 31 December 2021, or (b) rescheduling the trip by 31 December 2021. The travel voucher may also be converted into cash after 31 December 2021 if it has not been used for another trip prior to that date. The cash amount must be paid within 14 days from 31 December 2021. Should a traveller choose the option to reschedule but does not reschedule by 31 December 2021, he or she will also be entitled to receive a refund within 14 days from 31 December 2021. Both of these options are also granted to students children who had signed up for graduation school trips as per article 11 of Decree-Law 10-A/2020.

These measures entail a temporary modification of the Travel and Tourism Agencies Regime approved by Decree-Law no. 17/2018 of 8 March. Pursuant to paragraphs 4 and 5 of article 25, a traveller would be entitled to cancel his or her travel services agreement before the start of the trip in the event of exceptional circumstances at the destination or near the destination that could significantly affect the trip to his or her destination, in which case he or she would be entitled to a full refund (no additional compensation being due). Likewise, pursuant to the same regime, a travel agency could also cancel a trip at its own discretion in the event of unforeseen circumstances that mean that it would be unable to fulfil its obligations under the agreement or in the event that the number of travellers falls below the minimum number required as stated in the contract, in which case the traveller would also be entitled to a full refund.

By way of exception, unemployed travellers have until 30 September 2020 to request a full refund of any amounts they have paid (instead of having to choose between a travel voucher or rescheduling the trip).

Decree-Law 17/2020 establishes that if non-refundable reservations made with hotels or lodgings located in Portugal for the period between 13 March 2020 and 30 September 2020 are cancelled or simply do not happen for reasons attributable to the state of emergency declaration in Portugal or the guest's country of origin, or for reasons owing to the closing of borders because of the COVID-19 pandemic, guests will be entitled to choose between (a) a travel voucher which can be used to make another reservation by 31 December 2021 (and convertible into cash if not used by the guest by 31 December 2021, which must be paid within 14 days from that date) or (b) rescheduling the reservation by 31 December 2021 (in which case, if the hotel/lodging facility and the guest fail to agree on an alternative date by 31 December 2021, the full amount must be refunded to the guest within 14 days).

The rescheduling of reservations must be agreed directly with the hotel or lodging facility. If the parties agree to a new date where the applicable tariff is less than the amount charged initially, the balance must be made available as a non-refundable credit voucher for the guest to use in other services at the facilities.

As an exception to the above, guests who are unemployed have until 30 September to request a full refund for their reservations and this refund must be made within 14 days.

The above rules will not apply to refundable reservations to which the standard refund policy applied by the hotel or lodging facilities will apply.

Finally, Decree-Law 17/2020 establishes that travel agencies or tourism entertainment operators acting in Portugal (whether based in Portugal or abroad) must be granted a credit voucher for reservation fees they have paid at hotels or lodging facilities located in Portugal for the period between 13 March 2020 and 30 September 2020, which are cancelled for reasons attributable to the state of emergency declared in Portugal or the country of origin of such operators, or due to the closing of borders related to the COVID-19 pandemic.

The credit voucher must be used to pay for costs with other reservations made by the travel agency or operator at the same hotel or lodging facilities, on a date to be agreed determined by the travel agency or tourism entertainment operator, and subject to availability, by 31 December 2021. In the event that the hotel or lodging facility does not have rooms available for the new dates proposed by the travel agency or operator before 31 December 2021, the agency or operator can request a cash refund, to be paid within 14 days. Should the travel agency or operator not be able to schedule a new reservation before 31 December 2021, the reservation fee must be refunded within 14 days after that date.

Decree-Law 17/2020 entered into force on the day after its publication.

Energy sector

Given the current public health emergency and considering that energy supply is an essential service, the Energy Services Regulatory Entity has adopted a set of measures to ensure that this supply is not interrupted. In addition, the Directorate General of Energy and Geology has adopted exceptional and temporary measures regarding the licensing of the electricity sector, in line with the generic measures adopted by the Portuguese Government to combat the epidemic.

PROHIBITION OF SUSPENSION OF SUPPLY

Under article 4 of Law no. 7/2020, of 10 April ("**Law 7/2020**"), as amended by Law no. 18/2020, of 29 May, it is prohibited until 30 September 2020 to suspend the supply of water, electricity or natural gas. This prohibition applies in case of unemployment of the client, loss of income of 20% or more at the family level (to be evidenced in accordance with the terms set forth by ministerial order), or COVID-19 infection. In the event that there are payments owed relating to the supply of these services, a payment plan must be drawn up between the supplier and the customer, with both parties in agreement, which must begin in the second month after the end of the prohibition period mentioned in this paragraph (i.e. it must begin in November 2020).

MEASURES IMPLEMENTED BY THE ENERGY SERVICES REGULATORY ENTITY

The Energy Services Regulatory Entity ("**ERSE"**) published, on 18 March 2020, Regulation no. 255-A/2020, establishing the following contingency measures for the continuity of the supply of energy considered essential public services:

Additional period of 30 days for interruptions of supply and fractioned payment

The Regulation established an additional period of 30 days on top of the regular term for the energy supplier to interrupt the supply, due to an event attributable to the customer (e.g. lack of payment of the invoiced amounts). However, we believe that this measure was tacitly revoked by article 4 of Law 7/2020.

Moratorium on fees

Since the supply of energy to consumers requires energy suppliers to pay fees to transport and distribution grid operators, producers and other grid operators, ERSE has established a moratorium on the payment of these fees within an additional 30-day period, as follows:

i. The operators of the distribution grid, the operators of the global management system and the operators of the technical global management system temporarily support the amounts owed by the suppliers;

ii. For this purpose, the amounts owed are assessed by the difference between the amounts received by suppliers from customers and those charged by operators during the additional period in question;

iii. The operators will have to charge the suppliers for access to the grids on a fractioned basis (this fractioned payment will be regulated by ERSE); and

iv. No default interest shall be charged on the amounts invoiced by the operators to the suppliers during the additional period.

Considering article 4 of Law 7/2020, we understand that this moratorium will be maintained for an additional period of 30 days. At the end of this period, we do not believe that energy suppliers will have justifiable grounds for not paying the fees, even if they have not received any payment from consumers.

Extension of regulatory deadlines

The regulatory deadlines to which grid operators and suppliers are subject in their relationship with customers are extended by half the respective regulatory deadline (except in cases of proven urgency and with priority customers).

Other legal or regulatory deadlines, such as the ones regarding duties of information and reporting to ERSE, are not extended, except in cases of:

i. Request for an event to be considered as an exceptional event, for which the deadline becomes 30 days after the conclusion of the event; and

ii. Submission of the final report regarding a major incident, the deadline for which is now 20 days after the conclusion of the incident.

Contingency plans - duty to inform

The approved measures establish the obligation to inform ERSE of the contingency plans of distribution grid operators, suppliers of last resort and suppliers.

The Regulation also determines that operators must, on a priority and binding basis, act to guarantee the supply of energy to priority facilities, in particular, health facilities, including facilities that are mobilised for this regime on an exceptional basis, as well as public security and civil protection facilities.

To prevent the spread of the virus, ERSE also established that grid operators and suppliers should avoid actions that involve direct contact with the customer at their home, by reinforcing the means of remote communication in order to communicate readings, answer queries or clarify payment plans (except in cases of proven urgency and with priority customers).

MEASURES IMPLEMENTED BY THE DIRECTORATE-GENERAL FOR ENERGY AND GEOLOGY

The Directorate General of Energy and Geology ("**DGEG**") issued, on 20 March 2020, Order no. 27/2020, establishing the following exceptional and temporary measures regarding licensing in the electricity sector:

Suspension of procedural deadlines

The Order provides for the suspension of procedural deadlines regulated in electricity sector legislation and by the Administrative Procedure Code, including deadlines for the performance of acts and formalities provided for in competition procedure documents covered by the electricity sector legislation (*e.g.* bids for the attribution of injection capacity).

According to the Order, the suspension has been in force since 16 March 2020, the date on which the DGEG's facilities were closed to the public, and ends with the DGEG's declaration, published

on its website, announcing the reopening of its facilities or, if this occurs first, on a date to be defined by decree, constituting the end of the exceptional situation.

It should be pointed out that this interpretation raises some doubts, taking into account the general rule of suspension of administrative deadlines approved by Law 1-A/2020, analysed above, under which the suspension of administrative deadlines takes effect from 12 March 2020. Therefore, as a precaution, it is recommended that the start of the suspension period be confirmed with the DGEG, in light of the provisions of Law 1-A/2020.

Extension of procedural deadlines

The Order provides for the extension of the procedural deadlines that come to an end while the suspension is in force. These extensions will last for the number of days that remained between the date of suspension and the deadline for the act or formality, as established by law, regulation or administrative act that provides for it, starting on the first working day following the reopening of the DGEG premises.

Suspension of the submission of new applications

The Order provides for the suspension of the submission of new applications for the award of:

i. Reserve Capacity Titles;

ii. Agreements for the awarding of reception capacity in the Public Service Electricity Grid;

iii. Registrations for small production units or production units for self-consumption;

iv. Energy production licences under PRO, cogeneration and PRE; and

v. Licences for establishing grid infrastructure (lines and branches, transformer stations and substations, except for those of public or private service that are covered by situations considered as emergencies by the DGEG, for reasons of public health or other similar reasons).

The suspension applies to applications submitted from 21 March 2020 and expires at the end of April 2020.

The Order also states that the DGEG services will focus their activity on the processing of pending cases, with special priority given to the provision of essential public services.

Electronic communications sector

DECREE-LAW NO. 10-D/2020, OF 23 MARCH

Decree-Law no. 10-D/2020, of 23 March ("**Decree-Law 10-D/2020**") implements extraordinary and temporary measures in the electronic communications sector to address the COVID-19 health crisis.

Pursuant to Decree-Law 10-D/2020, companies that provide public electronic communications networks and services must continue to provide the following services that are classed as critical:

i. Voice and SMS supported by landline or mobile networks;

ii. Uninterrupted access to emergency services, including geolocalisation and the possibility of making public announcements;

iii. Data services supported by landline and mobile networks in such a way that access to the services provided in the annex to Decree-Law 10-D/2020 is guaranteed;

iv. Television distribution services (analogue and digital).

When providing critical services, operators must give precedence to priority groups according to Decree-Law 10-D/2020, which include, Government services, entities, and organisations, essential services operators as defined in Law 46/2018 of 13 August in the provision of their services, and critical infrastructure owners or operators pursuant to Decree-Law no. 62/2011, of 9 May in the operation of the infrastructure.

Amongst other measures, Decree-Law 10-D/2020 authorises operators to (i) implement network and traffic management measures, including reserving mobile network capacity (as well as prioritising some traffic categories and limiting features) and (ii) prioritise vital clients in relation to resolving system failures and other network disturbances. In addition, operators are authorised to supplement critical services provided through landline networks with systems, means and technology used in mobile networks.

All measures that operators implement under Decree-Law 10-D/2020 must be proportionate and transparent, and must not be implemented for business reasons or be in force for longer than is strictly necessary.

All measures must be notified to the Portuguese Government and to the Portuguese National Communications Authority ("**ANACOM**" for its Portuguese acronym) before they are implemented, or, if they are urgent, within 24 hours after they are implemented. If traffic management measures are implemented, operators are required to keep a complete and up-to-date record that is transparent and available for inspection, and which identifies entities, dates and geographic locations every time the measure is implemented. In addition, the operators must publish measures clearly on their websites within five business days and notify ANACOM.

Under Decree-Law 10-D/2020, operators must inform the public that the electronic communication services may be affected by the COVID-19 health crisis, and prepare guidelines for both individuals and companies on good practices and responsible use of electronic communication networks and services.

In addition, Decree-Law 10-D/2020 temporarily suspends some legal requirements for operators such as, in relation to quality standards, deadlines to reply to consumer claims, obligations to ensure the transfer of service or contracts between operators (portability) when doing so requires technicians having to interact in-person with the customer to perform the work, and other deadlines provided in the applicable regulations.

Finally, Decree-Law 10-D/2020 implements some measures that simplify administrative procedures, notably: (i) police need not be present to carry out technical work to restore critical services, to ensure that requests by priority clients are handled and to install temporary infrastructures to increase capacity or extend the network to relevant locations, unless the owners of the relevant sites expressly request so; (ii) the temporary licensing of radio communication networks or stations established in article 13 of Decree-Law no. 151-A/2000, of 20 July is not required, when the networks or stations are required to provide support to the mobile network or provide services to priority clients; and (iii) employees or agents that manage or operate the security and integrity of electronic communications networks and services are authorised to travel throughout the

Portuguese territory, including restricted areas, whenever this is necessary to carry out work to ensure the continuity of critical services for priority clients.

Decree-Law 10-D/2020 has been effective since 20 March 2020 and will be so until the public health authorities state that the COVID-19 health crisis has ended.

PROHIBITION OF SUSPENSION OF SUPPLY

Under article 4 of Law no. 7/2020, of 10 April ("**Law 7/2020**"), as amended by Law no. 18/2020, of 29 May, it is prohibited until 30 September 2020 to suspend the supply of electronic communications services, in case of unemployment of the client, loss of income of 20% or more at the family level (to be evidenced in accordance with the terms set forth by ministerial order), or COVID-19 infection. In the event that there are payments owed relating to the supply of these services, a payment plan must be drawn up between the supplier and the customer, with both parties in agreement, which must begin in the second month after the end of the prohibition period mentioned in this paragraph (i.e. it must begin in November 2020).

Furthermore, until 30 September 2020, consumers that are unemployed or that face a loss of income at the family level equal to or in excess of 20% (compared to the income of the preceding month) (to be demonstrated in the terms set forth by ministerial order) may request (a) the unilateral termination of electronic communication services agreements, with no compensation being payable to the operator and (b) the temporary suspension of such contracts, without penalties or additional obligations for the consumer, such contracts to re-initiate on 1 October 2020.

Competition law matters

STATE AID

Several European Union ("**EU**") Member States, including Portugal, have announced urgent measures to support the economy in the context of the COVID-19 outbreak.

The measures announced (or to be announced) by the Portuguese Government to support companies must be compatible with EU state aid rules. The general rule of incompatibility with the internal market of aid granted by Member States from state resources which distorts, or threatens to distort, competition by granting advantages to certain companies (see Article 107(1) of the Treaty on the Functioning of the EU ("**TFEU**")), remains applicable in these turbulent times, irrespective of some adjustments which we refer to below.

Further to this, Member States, and Portugal in particular, may need to notify the European Commission about measures qualifying as state aid under the terms of Article 107 TFEU and obtain its clearance before implementing any aid programmes.

The failure by Member States to comply with this procedure could lead to the European Commission ordering the reimbursement, with interest, of any state aid unlawfully granted up to 10 years after it was granted.

Notwithstanding, not all support measures announced (or to be announced) by the Government fall within the concept of state aid; indeed some measures qualifying as state aid may not be subject to individual authorisation by the European Commission, for example:

i. Measures that apply across all sectors of the economy (non-selective measures), such as lowering or reducing payroll costs, suspending the payment of business taxes and value added tax or social contributions, and financial support granted directly to consumers (i.e. to compensate for cancelled services or for tickets not reimbursed by operators) as a general rule do not fall within the concept of State aid and therefore do not need to be notified to the European Commission; and

ii. Even if certain measures qualify as state aid under Article 107 TFEU (e.g. because they benefit a specific sector), if they fall under the Block Exemption Regulation (EU Regulation 650/2014 of 16 June 2014, applicable for example to SME and R&D) or do not exceed the limits of the De Minimis Regulation (EU Regulation 650/2014 of 16 June 2014), they do not need prior approval by the European Commission.

In response to the current crisis, the European Commission has announced a package of measures to mitigate the impact of COVID-19 outbreak and clarified that Member States can make use of the provisions of the TFEU on state aid to address the current situation, including the possibility of:

i. Granting state aid to compensate for damages caused by "*natural disasters or exceptional occurrences*" (see Article 107(2)(b) TFEU); despite the fact that this provision requires the demonstration of damage directly caused by the COVID-19 outbreak, it may be used to justify the granting of aid to sectors specifically affected by the crisis, such as the transport or tourism sectors, or to companies in sectors affected by the closure order as a result of article 7 of Decree of the Council of Ministers 2-A/2020;

ii. Granting aid to "*remedy a serious disturbance in the economy of a Member State*" (see Article 107(3)(b) TFEU)[51]. In this respect, the European Commission has already confirmed that the COVID-19 outbreak is a serious situation requiring a rapid and harmonised response and has recognised that the entire EU economy is under serious distress, accepting for this purpose that various Member States use state aid to ensure that companies have sufficient liquidity to preserve economic activity during and after the COVID-19 outbreak;

iii. Granting aid to "*facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" (see Article 107(3)(c). Indeed, this provision can be used to justify the granting of aid to support testing and upscaling infrastructures that contribute

[51] Available at https://ec.europa.eu/commission/presscorner/detail/pt/ip_20_459.

to develop COVID-19 relevant products, as well as to support the production of products needed to respond to the outbreak.

Following the exception mentioned in point (ii) above and the recognition that the EU economy is under severe disruption, the European Commission approved, on 19 March 2020, a Temporary Framework[52], amended on 3 April 2020[53] and further amended by the Second Amendment of 8 May 2020[54], to support the economy of the Member States in the context of the COVID-19 outbreak, applicable from the date of its respective publication until 31 December 2020.

The Temporary Framework allows aid to be granted in the form of:

i. Direct grants, tax and payment advantages and others, up to EUR 800,000.00 per company to meet urgent liquidity needs. Separate rules apply to the maximum amounts of aid for the agriculture (EUR 100,00.00) and fisheries sector (EUR 120,000.00);

ii. Subsidised bank loan guarantees, with Member States being able to grant state guarantees on individual loans or set up bank loan guarantee regimes for enterprises; with limits on the maximum amount of the loan guaranteed, based on the companies' operating expenses, on their liquidity requirements, or as a percentage of their turnover in the previous year. The duration of the guarantees is limited to six years;

iii. Subsidised interest rates applicable for loans granted by public or private entities. The interest rate is at least equal to the base rate in force on 1 January 2020 plus the credit risk premium for the risk profile of the beneficiary. SMEs and non-SMEs follow a different procedure. There are limits to the maximum amount of each loan, which are based on the operational needs of the enterprises;

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[52] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_I_0001.

[53] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.112.01.0001.01.ENG&toc=OJ:C:2020:112I:TOC.

[54] Available at https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:52020XC0513(01)&from=EN.

iv. Short-term export credit insurance, for private individuals who evidence that certain cover is unavailable.

v. Direct grants, repayable advances or tax advantages granted to:

   a. R&D projects performing research activities associated with COVID-19 and other relevant antiviral drugs;

   b. the upscaling and testing infrastructures that are necessary to develop, test and optimize up to the first industrial deployment prior to the mass production of relevant products to face COVID-19 (e.g. products, treatments, devices and medical equipment). The investment projects must be completed within six months from the grant date, otherwise penalties corresponding to 25% of the aid amount per each month of delay shall apply;

   c. for the production of relevant products to deal with the outbreak of COVID-19 (e.g. products, treatments, devices and equipment). The investment projects for the production of these products must be completed within six months from the grant date, otherwise penalties corresponding to 25% of the aid amount per each month of delay shall apply.

vi. Deferrals of payment of taxes and/or of social security contributions applicable to enterprises (including self-employed individuals) particularly affected by the COVID-19 outbreak, for example in specific sectors or regions of a certain size. Such deferrals, provided that they do not go beyond December 31, 2022, shall be allowed if they are of general application and do not favour certain enterprises or the production of certain goods;

vii. Wage subsidies for workers to avoid lay-offs during the COVID-19 outbreak, granted in the form of schemes to undertakings in specific sectors, regions or of a certain size that are particularly affected by the COVID-19 outbreak. The wage subsidy is granted for a period not exceeding twelve months and not exceeding 80% of the beneficiary's gross monthly remuneration, workers that would otherwise have been laid off as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak; and

viii. recapitalisations granted through the (i) acquisition of the share capital of undertakings and/or through hybrid capital instruments in order to ensure that the disruption of the economy does not result in the unnecessary exit from the market of undertakings that were viable before the COVID-19 outbreak and (ii) aid in the form of subordinated debt to senior loans in the event of insolvency proceedings provided that certain requirements are met. Both measures apply when the amount of State aid necessary exceeds the limit of EUR 800,000.00 per undertaking.

Recapitalisation measures must meet, in particular, the following requirements[55]:

i. **Necessity**: recapitalisation aid can only be granted if it is demonstrated that, without the intervention of the State, the beneficiary would not be able to continue its activity or would face serious difficulties in exercising it; this should be evidenced through the deterioration in the debt/equity ratio of the company or through similar indicators. In addition, it must be demonstrated that the beneficiary was unable to obtain financing on reasonable terms on the market and that the other aid measures that might be taken by the State would not be sufficient to ensure the viability of the beneficiary[56]; and

ii. **Public interest**: the intervention must be justified in order to avoid (i) a significant loss of jobs; (ii) the exit from the market of an innovative or systemically important undertaking; (iii) a risk of disruption in the provision of an important service; or (iv) similar situations which have been duly justified.

The amount of recapitalisation must be limited to the minimum necessary to ensure the viability of the beneficiary undertaking and must not exceed what is necessary to restore the beneficiary's capital structure prior to the COVID-19 outbreak (i.e. until 31 December 2019).

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[55] Notwithstanding other requirements transversally applicable to state aid measures predicted under the Temporary Framework, namely the requirement that the beneficiary was not in difficulty on 31 December 2019.

[56] In this respect, not only measures adopted under the Temporary Framework but also any other aid measures of a horizontal (non-sectoral) nature adopted by the State may be taken into account.

Regarding the remuneration mechanism of the amount of the recapitalisation, the State should receive an adequate return on the investment in market terms, high enough to encourage the beneficiaries to buy back the shares acquired by the State as soon as possible and that shall increase over time ,as per the below[57]:

i. **Capital instruments**: the State's remuneration shall increase either through the granting of additional shares or other mechanisms by a minimum of 10% for each additional "bracket" as follows (i) 4 years after the intervention (5 years for unlisted companies) if the State has not sold 40% of its holding in the company's share capital the mechanism shall be activated; and (ii) this activation will be repeated 6 years after the intervention (7 years in the case of unlisted companies). The increase in the State's participation must be assumed by the remaining shareholders; and

ii. **Hybrid instruments**: the remuneration mechanism should take into account the characteristics of the instrument used[58], the incentives to divest for that instrument and an appropriate reference interest rate (as a minimum reference, one year IBOR plus a premium of between 225 and 950 base points, depending on the type of beneficiary and the corresponding year). The conversion of hybrid instruments into capital instruments shall be made at a minimum price of 5% under the terms of the Theoretical Ex-Rights Price at the time of conversion. After conversion, a mechanism for increasing the remuneration (by at least 10%) shall be established, which shall apply two years after conversion.

The following limitations are applicable in respect of the *governance* and non-distortion of competition of undertakings benefiting from recapitalisation aid:

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[57] In the case of a listed company the price must not exceed the average price of the beneficiary's shares in the 15 days preceding the recapitalisation request. If it is a non-listed undertaking the market price must be established by an independent expert or by other appropriate means.

[58] Including the level of subordination, risks and conditions of payment.

I. **Prohibition of advertising**: beneficiaries may not use recapitalisation for advertising purposes;

II. **Prohibition of dividend distribution, repurchase of shares and bonuses**: these can only be made after the share capital acquired by the State has been fully amortised;

III. **Prohibition of acquisition of competing undertakings**: provided that at least 75% of the recapitalisation has not been amortised, the beneficiaries (except SME) may not acquire more than 10% of the share capital of competing undertakings or other operators present in the same sector that carry out related activities (suppliers or customers) [59];

IV. **Limitation of the remuneration of the directors/officers**: until at least 75% of the recapitalisation has been amortised, the remuneration of these persons may not exceed the remuneration in force on 31 December 2019. The payment of bonuses, variable remunerations or any other similar instruments of remuneration is prohibited; and

V. **Prohibition of cross-subsidisation benefiting activities that were in economic difficulty on 31 December 2019**: it is mandatory to keep separate accounts between the various activities.

Concerning the conditions for exit, the recapitalisation measures should be repaid as soon as the economy stabilises. The beneficiaries (except SME) of a State recapitalisation exceeding 25% of their share capital must put forth a credible "exit strategy"[60] to be submitted to the State within 12

[59] Exceptionally, the acquisition of more than 10% of a competitor may be allowed if this is essential for the viability of the beneficiary. Such acquisition must be authorised by the European Commission before implementation.

[60] It does not apply if the State holding of more than 25% of the share capital lasts less than 12 months after the aid was granted.

months of the granting of the State aid[61]. In addition, compliance with the following should be ensured:

i. Beneficiaries shall submit to the State every 12 months a report showing the compliance with the conditions of governance and non-distortion of competition, as well as the implementation of the payment schedule;

ii. As long as the recapitalisation has not been written off, the beneficiaries (not SME) shall make public the use made of the aid received every 12 months after the aid has been granted; and

iii. If the State's shareholding has not been reduced to less than 15% of the beneficiary's share capital 6 years after the recapitalisation aid was granted in the case of listed undertakings (and 7 years in the case of other companies), a restructuring plan in accordance with the provisions of the Commission's Guidelines on state aid for rescuing and restructuring firms in difficulties must be notified to and approved by the Commission in order to ensure the beneficiary's viability.

State aid granted in the form of recapitalisation measures may be granted until 1 July 2021, a longer period than the one provided for the other aid measures predicted under the Temporary Framework, which may only be applied until 31 December 2020.

Finally, and what concerns State aid in the form of subordinated debt, subordinated debt instruments to the debt of preferential creditors (senior creditors) are now provided in the event of insolvency proceedings at reduced interest rates, whenever the maximum amount of debt does not exceed the following limits:

[61] The exit strategy should include: (i) the business continuation plan and the use of State funds, including the schedule of remuneration and depreciation payments and (ii) the measures to be implemented by the beneficiary to meet the payment schedule.

i. 2/3 of the annual wage costs of the beneficiary in 2019 for large undertakings and the corresponding wage costs in 2019 for SME; and

ii. 8.4% of the total turnover of the beneficiary in 2019 for large companies and 12.5% of the annual turnover of the beneficiary in 2019 for SME. In addition, certain limits have to be respected with regard to the percentage represented by these instruments with respect to senior preferential debt[62].

Should any of the above thresholds be exceeded, the provisions on recapitalisation measures shall apply.

It should be noted that the Temporary Framework has companies as its immediate beneficiaries; if Member States decide to channel aid to companies through banks, such aid shall be considered as direct aid to the customers of the banks benefiting from it and not to the banks themselves (with any aid intended for banks falling outside the scope of the Temporary Framework). Banks and financial intermediaries should therefore implement measures for the effective transfer of the advantages to the final beneficiaries of the aid, in particular by increasing the volume of financing, lowering the interest rates and guarantees required for such and reducing guarantee charges.

Irrespective of having to notify the European Commission before granting aid under the Temporary Framework, provided that the measures to be granted by the Member States are framed within the above, it will almost automatically be considered compatible with the internal market[63]. In practice, this means that the approval of State aid under the Temporary Framework should be particularly rapid; ; in this respect, and since the outbreak of COVID-19, the European Commission has already

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[62] One third of preferential debt for large undertakings and half for SME. Below these thresholds, the requirements and interest rates set out in the Temporary Framework will apply as regards aid in the form of subsidised loan rates.

[63] The information required for notification purposes is listed in the template approved for this purpose by the European Commission available at https://ec.europa.eu/competition/state_aid/what_is_new/amended_notification_template_TF_coronavirus.pdf.

approved a total of 149 state aids, 130 of which have been authorised under the Temporary Framework, 12 under Article 107(2)(b) TFEU and the remaining 7 under Article 107(3)(b) TFEU.

Relevantly, with the exception of the aid provided for in points vi. and vii. above, only companies that were not in difficulty on 31 December 2019 but are or will be in difficulty as a result of the outbreak of COVID-19 are eligible for aid under the Temporary Framework.

Considering the impact of the COVID-19 outbreak in the tourism and transportation sectors, and in order to ensure that companies in said sectors are aware of the tools, from a state aid perspective, available to mitigate such impact, the European Commission has:

(i) Approved, on 13 May 2020, recommendations on the offering of vouchers to passengers and travellers as an alternative to reimbursement for cancelled packaged travel and transport services[64], having made available a specific template for the purpose of requesting aid in the form of state guarantees over vouchers[65]; and

(ii) Made available, on 26 May 2020, an outline of the pre-existing rules on state aid applicable to the aerial, maritime and land transportation sectors[66].

MERGER CONTROL

Further to article 7, no. 9, c) of Law 1-A/2020, in the wording introduced by Law 4-A/2020, administrative deadlines concerning the practice of acts by private individuals were suspended

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64 Available at https://ec.europa.eu/info/files/covid-19-recommendation-vouchers-offered-passengers-and-travellers-alternative-reimbursement-cancelled-package-travel-and-transport-services_en.

65 Available at https://ec.europa.eu/competition/state_aid/what_is_new/air_transport_notification_template_public_guarantees_on_vouchers.pdf.

66 Available on https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html em https://ec.europa.eu/competition/state_aid/what_is_new/air_transport_overview_sa_rules_during_coronavirus.pdf .

between 9 March 2020 and (at least) 3 June 2020, the effective date of Law 16/2020, which repealed article 7.º of Law 1-A/2020, in the wording granted to it by Law 4-A/2020.

The suspension impacted directly merger control procedures before the Portuguese Competition Authority ("**PCA**"), as these entail a special administrative procedure to which the Portuguese Administrative Procedure Code applies on a subsidiary basis.

In practical terms, during the suspension period, the PCA was only complying with the deadlines imposed by the Portuguese Competition Law (Law no. 19/2012, of 8 May) regarding simple concentration operations, in which there was no intervention by interested third parties, nor the need to carry out a market investigation (*i.e.* to collect information from competitors, customers and/or suppliers).

Irrespective of further developments on the terms under which administrative deadlines ceased to be suspended – which are provided in the implications on procedural law section above – further to the entry into force of Law 16/2020, the PCA has resumed its merger control assessment activities, despite of the adjustments detailed below.

In relation to the European Commission, guidelines have been issued urging companies to discuss the timing of notifications of transactions with the relevant case team, as delays are likely to occur. These recommendations are justified by the difficulties associated with collecting information from third parties (*i.e.* competitors, customers and/or suppliers) during this period.

Finally, in view of the limitations to the movement of persons during this period, both the European Commission and the PCA accept (and encourage) the submission of documents necessary for the notification of merger transactions in digital format, by email or through the respective relevant electronic notification platforms, eTrustEx and SNEOC. In relation to the PCA, the original documents only need to be made available on paper if expressly requested; in case of the European Commission, the physical documents only need to be made available when the crisis resulting from the COVID-19 outbreak is normalised.

ADMINISTRATIVE PROCESS OF RESTRICTED PRACTICES

In line with the above information, administrative offence proceedings brought before the PCA, which follow the Portuguese General Regime of Administrative Offence Procedures on a subsidiary basis and involve the investigation of practices that restrict competition (agreements and concerted practices restricting competition, abuse of dominant position and abuse of economic dependence), and competition law cases that are pending before court were suspended, in accordance with Article 7, no. 9, of Law 1-A/2020, as amended by Law 4-A/2020, between 9 March 2020 and 3 June 2020, the effective date of Law 16/2020, which repealed article 7 of Law 1-A/2020, in the wording of Law 4-A/2020.

Despite the suspension, which is now over, on 16 March 2020, the PCA issued a statement confirming that it will continue its role of investigating possible abuses or anti-competitive practices that are particularly sensitive at this stage, when there is an increased risk of exploitation or of a reaction to the current crisis situation in a way that is detrimental to the economy and consumers, through price coordination or market sharing[67].

In addition, the PCA has alerted suppliers, distributors and resellers in all sectors of the economy, including suppliers of goods and services necessary for health protection and households and businesses supply to conduct business in a responsible manner throughout the various stages of the supply chain.

On 21 May 2020, the PCA issued a statement claiming that it had warned three trade associations in the pharmaceutical and financial sectors (*Associação Nacional das Farmácias, Associação Portuguesa de Bancos and Associação de Instituições de Crédito Especializado*) of the need to

[67] Available at http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado.

comply with competition rules in the context of the COVID-19 outbreak, having issued guidelines addressed to the referred associations for this purpose[68].

According to the PCA, the guidelines aimed to remind the associations that the imposition of commercial or other conditions on members of trade associations and the sharing of commercially sensitive information between members entails an infringement of competition rules, since undertakings should be free to individually determine their behaviour in the market.

The PCA also referred in the statement that it is available, exceptionally, to provide individual guidance to undertakings, on an informal basis, so as to not discourage them from adopting forms of cooperation that aim to benefit consumers and the economy, provided that these are temporary, proportional and objectively necessary to deal with supply shortages.

The European Competition Network ("**ECN**") - comprising the national competition authorities of the EU Member States, including the PCA and the European Commission - has also issued a joint statement regarding the consequences of the COVID-19 outbreak on the application of the rules on practices restricting competition and the mechanisms available to companies in this context[69]. In its statement, the ECN stresses that the competition law objectives still stand and that the competition authorities will not hesitate "*to act against enterprises which profit from the current circumstances*", paying particular attention to products considered essential to protect consumers' health.

However, the ECN cautions that "*the current extraordinary situation may trigger the need for cooperation between enterprises in order to guarantee the supply and fair distribution of products of scarce availability for all consumers*", which confirms the willingness of regulators to adopt exceptional competition law enforcement criteria, if necessary.

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[68] Available at http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_202007.aspx?lst=1&Cat=2020.

[69] Available at http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_202005.aspx?lst=1&Cat=2020.

Therefore, although companies must continue to act in compliance with competition rules, different ways of cooperation to overcome the impact of the crisis should be assessed on a case-by-case basis in order to determine if they are compatible with competition law.

The European Commission, referring to the ECN joint statement above, stated, similarly to the PCA, that it stands firm in its role of detecting practices suitable of restricting competition; however, it specifically recognised the need for companies to cooperate in order to overcome the crisis caused by the COVID-19 outbreak and ultimately to benefit consumers.

In order to ensure that such cooperation is carried out in compliance with competition rules, the European Commission recalls the existence of several guidelines already in force[70] and makes itself available to informally advise companies on the lawfulness of eventual coordinated practices with competition law during the current crisis period[71].

Following this statement, the European Commission approved on 8 April 2020 a Temporary Framework related to the analysis of potential restrictive practices resulting from cooperation between companies in the context of the COVID-19 outbreak[72].

In particular, the European Commission recognises that, to the extent that potential exchanges of commercially sensitive information are subject to sufficient safeguards, certain types of cooperation between companies may be necessary to avoid shortages of products and services during the COVID-19 outbreak and, as such, will not be considered incompatible with competition rules; among these are:

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[70] Namely, (i) the Guidelines on the application of Article 101 (3) TFEU, (ii) the Guidelines on the application of Article 101 of the TFEU to horizontal cooperation agreements and (iii) the Guidelines on vertical restraints.

[71] Having created the e-mail COMP-COVID-ANTITRUST@ec.europa.eu for this purpose, to which all relevant questions should be sent.

[72] Available at

https://ec.europa.eu/info/sites/info/files/framework_communication_antitrust_issues_related_to_cooperation_between_competitors_in_covid-19.pdf

i. The entrusting of trade associations, independent third parties or public bodies, to:

   a. Coordinate the joint transport of raw materials necessary for the production of products to combat the COVID-19 outbreak;

   b. Contribute to the identification of key pharmaceuticals which, due to the high existing demand, will be in a situation of shortage in the near future;

   c. To compile information on production data and aggregate capacity of the various companies, provided that commercially sensitive information is subject to sufficient safeguards;

   d. Develop models to forecast the level of demand for certain products at the level of each Member State and identify potential supply gaps; and

   e. Share information concerning the need to supply certain products among the participants in order to ensure the supply of those products, while ensuring the absence of exchanges of commercially sensitive information.

ii. Coordination for reorganisation of production, stocks and, eventually, distribution of key medicines to combat the outbreak of COVID-19, provided that:

   a. It is objectively necessary to increase production as efficiently as possible and to treat or prevent supply gaps of these products;

   b. It is of a temporary nature (limited to the duration of the COVID-19 outbreak); and

   c. It does not exceed what is strictly necessary to ensure supply and avoid shortages of the products in question.

With particular relevance, and within the Temporary Framework in reference, the European Commission has reinforced its willingness, through the Directorate-General for Competition, to guide companies on the legality of any coordinated practices, including through the provision, on an ad hoc basis, of comfort letters regarding the compatibility of coordinated activities necessary in the context of the COVID-19 outbreak with competition rules.

Although not necessarily related with anticompetitive practices, but of great importance for all fields of law, on 19 March 2020, on 5 May 2020 and on 25 May 2020 the Court of Justice of the European

Union clarified that, in respect of cases brought before the Court of Justice of the European Union or the General Court of the European Union, judicial activity shall continue with some limitations and adaptations (in this respect, please refer to the section on **procedural law matters** above).

Data protection matters

SUSPENSION OF DEADLINES IN ADMINISTRATIVE PROCEEDINGS

Due to the state of emergency caused by the spread of COVID-19, on 16 March 2020 the Portuguese Data Protection Authority (the "**CNPD**") issued Resolution 2020/170 which interrupted, with immediate effect, the deadlines to respond to its draft decisions in the context of administrative proceedings currently pending under Decree-Law 10-A/2020.

However, the subsequently enacted Law 1-A/2020 suspended those deadlines, as of 12 March 2020. As such, in what regards administrative proceedings, all deadlines are suspended until the state of emergency is legally declared to have ended (please see the section on **procedural law matters**).

GUIDELINES ON MONITORING REMOTE WORKING

Moreover, and in the context of the widespread practice of remote working owing to the lockdown and isolation measures imposed to address the pandemic caused by COVID-19, the CNPD issued, on April 17, "Guidelines on monitoring remote working . The purpose of these Guidelines is to ensure that the processing of employee personal data complies with the data protection laws and minimises the impact of remote working on privacy.

The CNPD points out that, under normal circumstances, the information and communication technology devices used by an employee working remotely belong to the employer. In these cases, employees must respect the rules on the use of these tools, using them only for professional purposes, unless otherwise agreed with the employer.

However, the current exceptional social distancing situation has meant that some employees have had to use their own technological resources to work remotely since their employers did not have enough time to provide their employees with the necessary technological means. For this reason, the CNPD advises caution when implementing measures to monitor employees' activity.

In this context, and according to the general rule prohibiting remote employee monitoring (since this entails forcing restrictions on the employee's private life) and the general principles of proportionality and data minimisation, employers are prohibited from using "*software which, apart from tracking working time and idle time, records the websites visited, detects the location of the terminal in real time, detects the use of peripheral devices (mouse and keyboard), takes screenshots of the computer screen?/captures images of the desktop, tracks and records when applications are opened, monitors the document which is being worked on and records the time spent on each task (e.g. through, TimeDoctor, Hubstaff, Timing, ManicTime, TimeCamp, Toggl, Harvest)*". In addition to these restrictions, the CNPD considers that the employer cannot record teleconferences or require the employee to keep their camera permanently switched on. These restrictions do not mean that the employer may not, in some way, maintain its management and monitoring authority over an employee's activity, for example, by setting goals and creating reporting obligations, as often as considered appropriate.

The practice of remote working also imposes specific solutions for recording working time, which should be limited to reproducing the same conditions for recording the time worked as those in the employer's premises. These tools should not collect more information than is necessary for this purpose and, in the absence of such solutions, the use of e-mail, telephone, SMS or any similar means that allow the monitoring of the availability and working times of the employee, is admitted.

GUIDELINES ON DISCLOSURE OF INFORMATION RELATING TO THOSE DIAGNOSED WITH COVID -19

On the other hand, in the context of several complaints from citizens who, having being diagnosed with COVID-19, have seen their personal information disclosed to the public by local authorities on their websites, in a particularly detailed manner, setting out the cases by municipality and therefore allowing patients to be easily identified, the "Guidelines on disclosure of information relating to those diagnosed with COVID -19" were issued by the CNPD on 22 April, to ensure compliance with the legal framework on data protection in relation to the disclosure of this information .

Firstly, the CNPD states that local authorities must not publish health data that identifies the persons it relates to. This is because the disclosure of health data may cause the persons identified to

become stigmatised and municipalities are not legally authorised to process such data on an individual basis. In light of the current uncertain situation and patients' dependence on public authorities, the persons to whom this data refers would not be able to grant their consent. The CNPD also states that the public disclosure of this information is not particularly useful, bearing in mind that measures could be implemented that would be less damaging to persons' privacy and would achieve the same goal, therefore this measure is also disproportionate for this reason.

Secondly, the CNPD states that, for the same reasons, health data cannot be published even if the names of the patients are removed "*when there is a small number diagnosed with the virus in a particular territorial constituency and its population allows for the identification of the persons who have been diagnosed with the virus.*"

As a final note, the CNPD recommends that local authorities "*should refrain from adopting initiatives involving the collection and disclosure of their citizens' personal data when they have no legal basis to do so, or are not following the guidelines issued by the national health authority.*"

GUIDELINES ON THE COLLECTION OF WORKERS' HEALTH DATA

Finally, on 23 April, the CNPD also issued its "Guidelines on the collection of workers' health data" to ensure that the processing of workers' health and personal data complies with the legal framework on data protection.

The CNPD states that health data is sensitive information and should not, in principle, be known to the employer. As a result of health data leading to the possibility for potential discrimination, it is subject to a specially recommended data protection regime under which any "*employer does not know, and cannot directly collect or record, workers' health data*". Therefore, regardless of the exceptional situation created by the state of emergency, an employer may not carry out any acts that are reserved for the health authorities or the individual worker, in a self-monitoring process, such as collecting or recording his or her body temperature or any other information related to his or her health status, including any other behaviour that puts this data protection regime at risk. However, there is nothing to prevent healthcare professionals in the context of occupational medicine, from assessing the health status of workers and collecting the necessary information to

assess their fitness for their job, according to the general terms defined by the law on health and safety in the workplace. In addition, the healthcare professionals must also determine the frequency and type of assessment necessary for this purpose, within the relevant scientific criteria and in the event workers are detected with symptoms of COVID-19 or any other situation which warrants it, with a view to safeguarding their health and that of others. Therefore, the possibility to collect health or privacy information by using questionnaires will only be allowed in that context.

In conclusion, the CNPD notes that employers should only act in accordance with the guidelines of the national health authority, "*refraining from adopting initiatives that would involve the collection of personal health data of their employees when they have no legal basis to do so, nor have they been ordered by the competent administrative authorities*" and their main aim should be to improve and intensify the hygiene care of workers and the workplace, as well as the implementation of some surveillance measures duly approved and recommended by the DGS.

CNPD REITERATES ITS OPINION ON THE COLLECTION OF WORKERS' BODY TEMPERATURE

CNPD issued, on 12 May, a response to a parliamentary request that raised a series of questions related to the "Guidelines on the collection of workers' health data" issued by the CNPD on 23 April.

The CNPD started by specifying that the Guidelines' purpose was not restricted to information on workers' body temperature, but extended "*to the processing of any health information from these data subjects in the current pandemic situation caused by the new SARS-CoV-2 virus and the Covid-19 disease*", providing information on the legal regime applicable to various types of data processing.

On the other hand, the CNPD took the stance that personal data concerning an individual's health status may be processed only if one of the provisions set out in Article 9(2) of the GDPR is applicable; with the exception of the legally defined framework of occupational medicine, no other circumstance existed at the time of the Guidelines that permitted the processing of personal data concerning a worker's health status, which processing was only permissible in exceptional circumstances, when the act of giving or refusing consent did not produce any negative

consequences. The submitted alternative invokes the public interest as its ground under Article 9(2)(i) of the GDPR. However, pursuant to the CNPD, this ground is invalid due to the fact that the domestic-law provision on appropriate and specific measures safeguarding the rights and freedoms of the data subject, in particular professional secrecy, appear to be lacking. Similarly to what had already had been confirmed by these Guidelines, the CNPD states that everyone, *per se*, cannot be allowed to arrogate to themselves the prerogative of freely interpreting what consists of public interest and public health, determining what is best for the pursuit of the same. The specific task of pursuing the public interest underlying public health and guiding citizens and companies on the way forward to fight the present pandemic is entrusted to administrative bodies, specifically the Directorate-General of Health (*Direção-Geral de Saúde*) ("**DGS**").

In this context, the CNPD takes the opportunity to comment on the provisions of Article 13(C), recently introduced in Decree-Law 10-A/2020 by Decree-Law 20/2020, which allows employers to potentially measure the body temperature of their workers for the purposes of access and permanence in the workplace, preventing workers from entering the premises whenever they have a higher-than-normal body-temperature reading. In this regard, the CNPD states that "*this legal norm does not contain the degree of precision and predictability that, under the rule of law, is required of any norm restricting rights, freedoms and guarantees*". Considering the nature of the employment relationship, the restrictive rule must comply with the requirements imposed by Article 9(2)(b) and, in parallel, Article 9(2)(g) and (i) of the GDPR, and must provide for appropriate and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy. In accordance with the CNPD, the Article 13(C) allows for two possible interpretations regarding what is to be considered a normal temperature: (i) the normal body temperature of each particular worker, which would imply the existence of a record of the same in the direct possession of the employer or representative who is on site reading the temperature (and would therefore depend on further processing of personal health data that lacks a legal basis) or (ii) it is intended to refer to the temperature that the DGS has already defined as relevant in its guidelines—although, in that case, it would be preferable that the provision clearly stated that. On the other hand, the provision in question also does not regulate the consequences of the exercise of the employer's powers after a higher-than-normal temperature reading has occurred. In addition to the fact that the

worker is prevented from entering the workplace, the fact that he or she is not being reported as unfit for work by a doctor means that he or she will not be granted sick leave.

Furthermore, the CNPD criticises Article 13(C)(2), which states that the provision on the possibility of reading body temperature does not prejudice the right to individual data protection, since it is expressly prohibited to read the body temperature associated with the identity of the person, except with the specific person's express consent. On the one hand, the reading of the temperature is a processing of personal data with legal consequences in the life of the data subject; on the other hand, the asymmetric nature of the employment relationship does not allow, under any circumstances, recognising the validity of the worker's consent.

Another alternative used to justify the processing of data could be that it is "*necessary to protect the vital interests of the data subject or of another natural person*" under Article 9(1)(c) of the GDPR. The CNPD also considers this ground to be inapplicable in the current situation, since it can only be applied exceptionally, when not only is it demonstrated that the processing is indispensable to save human lives, but also the physical or legal incapacity of the data subject to express his or her will has been proved, which, in the opinion of the CNPD, is not applicable in the current context.

The CNPD concludes by taking the position that there is currently no scientific evidence supporting the need to collect workers' health data (in particular, temperature readings) directly by the employer and therefore maintains the understanding that the self-monitoring process recommended by the DGS is sufficient to control the chain of transmission of the disease, which is applicable to all workers, including health professionals. In this context, the CNPD only considers as potential spaces where body temperatures can be read as a way to prevent the spread of COVID-19 infection medical and nurses' offices, or areas that ensure the proper reserve for the process of self-monitoring of workers or other people.

STATEMENT FROM THE EUROPEAN DATA PROTECTION BOARD REGARDING THE PROCESSING OF PERSONAL DATA IN THE CONTEXT OF THE COVID-19 PANDEMIC

In addition to this, the European Data Protection Board (the "**EDPB**") also issued a Statement on 19 March 2020 (after a press release on 16 March) regarding the processing of personal data in the

context of the COVID-19 pandemic. The EDPB has underlined that the processing of personal data carried out in the context of COVID-19 must take into account the general rules and principles of the General Data Protection Regulation (the "**GDPR**"), especially in three main aspects: (1) the core principles of personal data processing, (2) the use of mobile location data, and (3) the processing of personal data within employment relationships.

Articles 6 and 9 of the GDPR establish the possibility of employers and public health authorities processing personal data in the context of an epidemic without the consent of the data subject on the grounds of public health, to protect vital interests or to comply with other legal obligations. However, the EDPB has highlighted the need for data subjects to receive transparent information regarding the processing activities that are being carried out and their main features (especially regarding purposes and retention periods), as well as the importance of adequate security measures and confidentiality policies.

The EDPB has also highlighted the possibility of processing personal data in the context of electronic communications (e.g. mobile location data), as long as some additional rules are complied with (since, according to the laws of the Member States implementing the E-Privacy Directive, such data can only be processed by operators if it is properly anonymised or the data subjects' consent has been obtained). Therefore, even in the context of emergency situations caused by COVID-19, public authorities must favour anonymising data or, when that is not possible, introducing legislative measures that pursue national or public security (e.g. safeguarding public health). Further to this, Member States are obliged to ensure appropriate safeguards, such as granting individuals the right to a judicial remedy. Finally, the principle of proportionality must always be applied; thus, the least intrusive solutions should always be preferred, taking into account the specific purpose to be achieved.

Lastly, in what regards the processing of personal data in the context of employment relationships, the EDPB has highlighted, once again, the principle of proportionality: an employer should only request health data from its employee to the extent permitted by national law and should only process the data necessary to organise work and comply with its legal obligations. Furthermore, information provided to employees about COVID-19 cases should be limited to the very minimum possible and, if national law allows the disclosure of names of employees who have contracted the

virus (for preventive purposes), the employees in question should be informed in advance. Finally, an employer may only perform medical check-ups on employees if its own legal obligations require it to do so.

GUIDELINES FROM THE EUROPEAN COMMISSION REGARDING THE DEVELOPMENT OF APPS SUPPORTING THE FIGHT AGAINST THE COVID-19 PANDEMIC

On the other hand, the European Commission published on April 16 a communication (2020/C 124 I/01) offering guidance on the development of apps supporting the fight against the COVID-19 pandemic in relation to data protection (the "**Communication**"). The aim of the Communication is to ensure a coherent approach across the EU and provide guidance to Member States and app developers, in order to comply with the EU privacy and personal data protection legislation, in particular the GDPR and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 (the "**ePrivacy Directive**").

The Communication is not legally binding and only addresses apps that are downloaded, installed and used on a voluntary basis by individuals with one or several of the following functionalities:

a. Providing accurate information to individuals about the COVID-19 pandemic (information functionality);

b. Providing questionnaires for self-assessment and guidance to individuals (symptom-checker functionality);

c. Alerting persons who have been in the proximity of an infected person, in order to provide information such as whether to self-quarantine and where to get tested (contact-tracing and warning functionality); and

d. Providing a forum between patients and doctors in self-isolation or where further diagnosis and treatment advice is provided (increased use of telemedicine).

The European Commission advises against the use of the data obtained under the above conditions for purposes other than the fight against COVID-19. Should data need to be obtained for scientific

research or statistical purposes, these should be included in the original list of purposes and clearly communicated to users.

Since the apps can have a significant impact on a wide range of rights, such as human dignity, respect for private and family life, the protection of personal data, the freedom of movement, non-discrimination, freedom to conduct business, and freedom of assembly and of association, the following guidelines should be followed:

1. National health authorities

Due to the high sensitivity of the data and the ultimate purpose of the apps, the national health authorities (or entities carrying out health-related tasks in the public interest) should be the bodies responsible for ensuring not only compliance with the GDPR, but also for providing individuals with all the necessary information related to the processing of their personal data, including what is going to happen to their personal data, what their rights will be and who will be responsible in the case of a data breach. In the opinion of the European Commission, when health authorities are the data controllers this contributes to higher trust among the population and therefore greater acceptance of the apps (and underlying infection transmission chain information systems).

2. Ensuring that users remain in control of their personal data

In order to ensure that users trust the apps, it is important that they remain in control of their personal data. The European Commission states, for example, that (i) individuals should be able to install the app voluntarily and there should be no negative consequences for those who decide not to download or use the app; (ii) individuals should be able to provide their consent for each specific functionality embedded in the app; (iii) health authorities must provide users with the necessary information related to the processing of their personal data (in line with articles 12 and 13 of the GDPR and article 5 of the ePrivacy Directive) and should allow individuals to exercise their rights under articles 15 to 22 of the GDPR; and (iv) apps should be deactivated, at the latest, when the pandemic is declared to be under control.

3. Data minimisation

The principle of data minimisation requires that only personal data that is appropriate, relevant and limited to what is necessary in relation to the purpose may be processed. The European Commission considers, for instance, that apps with symptom-checking or telemedicine functionalities do not require access to the contact list of the person owning the device. For apps with contact-tracing and warning functionalities, the European Commission recommends the use Bluetooth Low Energy ("**BLE**") instead of geolocation data, since BLE avoids the possibility of tracking and the goal of this type of app is not to follow the movements of individuals or to enforce prescriptions. In the case of apps that only provide information, no information stored in or accessed from terminal equipment may be processed other than what is necessary to provide the information.

4. Setting limits on the disclosure, access and storage of data

Health authorities should only have access to the data necessary to provide accurate information to individuals about the COVID-19 pandemic. In apps with contact-tracing and warning functionalities, the infected person should not be informed about the identity of the persons with whom he or she has been in potentially epidemiologically relevant contact and who will receive an alert. The principle of storage limitation requires that personal data collected by the apps may not be kept for longer than necessary. Timelines should be based on medical relevance, as well as administrative steps that may need to be taken. An indicative one-month period (incubation period plus margin) is to be applied, for example, in symptom-checker and telemedicine functionalities or contact-tracing and warning functionalities.

5. Ensuring the security and accuracy of the data

The European Commission recommends that, in order to ensure the security of the data, (i) the data should be stored on the terminal device of the individual in an encrypted form using state-of-the-art cryptographic techniques; and (ii) all transmissions from the personal device to the national health authorities should be encrypted.

It is also a requirement under EU privacy and personal data protection legislation that any processing of personal data must be accurate. In this context, the risk of having false positives has to be minimised and the use of location data based on mobile phone networks is not likely to ensure

the accuracy of the information on whether contact with an infected person has taken place (it is therefore advisable to rely on technologies that allow for a more precise assessment of the contact (such as Bluetooth)).

6. Involving Data Protection Authorities

According to the European Commission, the Data Protection Authorities should be fully involved and consulted on the development of the app.

GUIDELINES ON THE USE OF LOCATION DATA AND CONTACT TRACING TOOLS IN THE CONTEXT OF THE COVID-19 OUTBREAK

Also on April 21 In the context of the increasing demand from both government entities and private entities for solutions based around the processing of personal data to combat the COVID-19 pandemic, on 21 April, the EDPB issued its Guidelines on the use of location data and contact tracing tools in the context of the COVID-19 outbreak which clarify the conditions and principles for the proportionate use of location data and tracking tools for two specific purposes: (i) "*use of location data to support the response to the pandemic by modelling the spread of the virus to assess the overall effectiveness of containment measures*"; and (ii) "*interpersonal contact tracing in order to notify individuals in the vicinity of someone confirmed as carrying the virus so as to break the chains spreading the virus as early and as quickly as possible.*"

The EDPB begins by noting that the data protection regime is designed to be flexible and, as such, is capable of achieving both an efficient response to control the pandemic and the protection of fundamental rights and freedoms. Consequently, all actions in this area should be guided by the general principles of effectiveness, necessity and proportionality.

1. Sources of location data

Regarding the location data used to monitor the spread of the virus and the overall effectiveness of the containment measures, the EDPB notes that this data may derive from electronic communication service providers (e.g. mobile network operators) and applications provided by Information Society service providers whose functionality requires the use of such data (e.g. navigation, transport services, etc.). With regard to data originating from electronic communications service providers,

these data may only be transmitted to public authorities or to third parties, if they have been rendered anonymous or when they relate to data indicating the geographical position of a user's terminal equipment the user's prior consent must be obtained. On the other hand, access to data stored in the user's terminal equipment is only allowed if consent is given or if storage/access is strictly necessary for the service requested by the user. These rules, which derive from the ePrivacy Directive, may however be waived if this proves to be a necessary, appropriate and proportionate measure in a democratic society in order to pursue certain objectives. As regards the re-use of location data collected by an application of an Information Society service provider for modelling purposes, additional conditions must be met: the data may only be processed with the additional consent of the data subject or on the basis of legislation issued by the European Union or of a Member State establishing this measure.

2. Focus on the use of anonymised location data

In addition, when processing location data the EDPB stresses that anonymised data, i.e. data which, through "reasonable effort", are no longer likely to be connected with an identified or identifiable natural person, should always be given preference. In addition, the EDPB highlights that anonymisation and pseudonymisation are different. This is because the use of anonymised data is not subject to any restrictions, whereas pseudonymised data are no longer personal data and therefore are not subject to GDPR requirements.

3. Contact tracing applications - general legal analysis

With regard to contact tracing applications, the EDPB states that systematic and large-scale monitoring of the location and/or contact between individuals is a serious intrusion into their privacy and can therefore only be carried out by each user voluntarily agreeing to the respective purpose of the application. This would mean, in particular, that individuals who decide not to use or cannot use such applications should not suffer any disadvantage. The EDPB notes that both public health authorities and private entities may be responsible for using such applications at the same time, in which case, their roles and responsibilities should be clearly defined and explained to users. Furthermore, according to the purpose of the limitation principle, these applications should only be

intended for use in order to manage the health crisis and any other purposes (e.g. marketing or public safety) are excluded from the outset.

The EDPB sets out three aspects related to the data minimisation principle to be considered in this context: (i) "*contact tracing applications should not record the location of individual users. Instead, they should only record encounters between users*"; (ii) "*since contact tracing applications can work without direct identification of persons, appropriate measures should be taken to avoid their re-identification*"; (iii) "*the information collected should remain in the user's terminal equipment and only the relevant information should be collected when absolutely necessary*".

On the other hand, with regard to the legal basis for processing the data, and since this type of application involves storage and/or access to information already stored in the terminal equipment, as mentioned above, this processing can only be carried out with consent or in the event the storage/access is strictly necessary for the service requested by the user. This means that consent will only be required if the processing of personal data does not relate to operations specifically requested by the users.

In addition, the EDPB also states that the fact that the use of contact tracing applications is voluntary does not mean that the processing of personal data from these applications is necessarily based on consent. When public authorities provide a service on the basis of a mandate given by and in accordance with legal requirements, it appears that the relevant legal basis for the processing of the data is the need to carry out a task in the a public interest. For this purpose, legislation is necessary to legitimise the public interest requirement and to incorporate safeguards to the rights of individuals and should include the following references: (i) the voluntary nature of the use of the application; (ii) explicit limitations on the further use of the personal data; (iii) the identification of the data controller(s); (iv) the categories of data used; and, as soon as possible, (v) criteria to determine when the application should be deactivated and who should be responsible for this task.

In addition, the EDPB also notes that these applications may also collect health data, which may only be processed for public health, health care or scientific research purposes, in accordance with Article 9(2)(h), (i) and (j) of the GDPR. Explicit consent may also be another ground to legally allow for the processing of health data under Article 9(2)(a) of the GDPR. In this context, the GDPR also

states that the current crisis should not be used as an opportunity to establish disproportionate data retention periods and that data should only be retained for the duration of the COVID-19 crisis, taking into account the genuine needs and medical relevance of that information (this may include epidemiological reasons such as the incubation period), and that data should subsequently be erased or made anonymous. Furthermore, these applications cannot replace, but only support, contact tracing done by qualified public health personnel who are able to determine whether contacts are likely to result in the transmission of the virus or not. The EDPB stresses that procedures and processes must operate under the strict supervision of qualified personnel in order to limit the occurrence of any false positives or negatives. In particular, the task of advising on the next steps involved should not be based solely on automated processing. Finally, the EDPB states that a data protection impact assessment should be carried out before the implementation of these applications, as the processing is considered high-risk, and recommends the publication of the results of these impact assessments.

4. Recommendations and functional requirements

Finally, the EDPB issues a set of recommendations related to the lawfulness of data processing within these applications. Firstly, and in accordance with the data minimisation principle, the data processed should be reduced to the strict minimum (i.e. the application should not collect information not related or necessary to the purpose, such as marital status, communication identifiers, equipment directory items, messages, call logs, location data, device identifiers), to ensure the data transmitted by the application should include only some unique and pseudonymised identifiers, generated by, and specific to the application. These identifiers should be renewed regularly, as often as is compatible and sufficient to contain the spread of the virus, limiting the risk of identification and the physical screening of individuals. The EDPB notes that any server involved in the application screening system should only collect contact history or pseudonymised identifiers from users infected with COVID-19 following an assessment that has been confirmed by the health authorities and always following the voluntary action by the user. Alternatively, the server may keep a list of pseudonymised identifiers of users infected with COVID-19 or their contact history only for the time necessary to inform other users of their exposure, and must not attempt to identify users that could be potentially infected with COVID-19. State-of-the-art cryptographic techniques should also be

implemented to protect data stored on servers and applications and in exchanges between applications and the remote server. Finally, disclosure of a user infected with COVID-19 in the application should be subject to specific and appropriate consent and based on the condition that a testing laboratory or healthcare professional validates that information. If confirmation of the infection cannot be obtained safely, the data cannot be processed based only on assumptions of the user's health status. The controller, working in collaboration with the public authorities, must clearly and explicitly issue information (to the public) on the correct link to download for the national contact tracing application in order to reduce the risk of the data subjects wrongly using third-party applications.

GUIDELINES IN RELATION TO THE PROCESSING OF HEALTH DATA FOR THE PURPOSE OF SCIENTIFIC RESEARCH IN THE CONTEXT OF THE COVID-19 OUTBREAK

Finally, on 21 April, the EDPB published the guidelines 03/2020 in relation to the processing of health data for the purpose of scientific research in the context of the COVID-19 outbreak. The aim of these guidelines is to answer and clarify the urgent questions concerning the use of health data, in that context.

The EDPB begins by stating that the GDPR contains several rules which allow for the processing of personal data for the purpose of scientific research to address the COVID-19 pandemic, which are in accordance with the fundamental rights to privacy and protection of personal data. The GDPR also provides for a specific derogation from the prohibition of processing of certain special categories of personal data, such as health data, whenever it is necessary for scientific research purposes.

Pursuant to Article 4(15) of the GDPR, health data is "*personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status*". In accordance with the GDPR, processing of health data for the purpose of scientific research means that this data can be used for two purposes;

i) Research on personal (health) data which consists of the use of data directly collected for the purpose of scientific studies ("**Primary Use**"); and

ii) Research on personal (health) data which consists of the further processing of data that was initially collected for another purpose ("**Secondary Use**").

The processing of all personal data concerning an individual's health status must comply with (*i*) the general principles relating to the processing of the data set out in Article 5 of the GDPR and (*ii*) one of the legal grounds and the specific derogations listed respectively in Article 6 and Article 9 of the GDPR that allows for the lawful processing of these special categories of personal data (i.e. the explicit consent or declaration of specific laws by the legislator of each Member State under Article 9(2)(i) and (j) of the GDPR to authorise the processing of health data for scientific research purposes).

Considering the context of the Guidelines, the following principles in particular need to be taken into consideration:

1. Transparency and information to data subjects

The principle of transparency means that personal data must be processed fairly and transparently in relation to the data subject.

When dealing with the processing of health data, in cases of primary use, pursuant to Article 14(3)(a) of the GPDR, the controller must provide the information within a reasonable time period after obtaining the personal data, within one month at the latest, having regard to the specific circumstances in which the personal data is processed.

On the other hand, in regard to the cases of Secondary Use and taking into account the sensitivity of the data being processed, an appropriate safeguard put in place according to Article 89(1) of the GDPR is to deliver the information to the data subject within a reasonable time period before the implementation of the new research project. This allows the data subject to become aware of the research project and therefore have the possibility to exercise his or her rights beforehand.

However, Article 14(5) of the GDPR sets out a number of exemptions in relation to the information obligation:

a) If it proves impossible or would involve a disproportionate effort, pursuant to Article 14(5)(b):

i. "*Proves* impossible": If a data controller tries to prove that the information obligation is impossible to undertake, it must demonstrate the factors that actually prevent it from providing the information in question to data subjects. If, after a certain period of time, the factors that caused the "impossibility" no longer exist and it becomes possible to provide the information then the data controller should immediately do so.

ii. "Disproportionate *effort*": to assess this criterion, the number of data subjects, the age of the data and the appropriate safeguards should be used as indicative factors.

b) If obtaining or disclosure is expressly laid down by the European Union or Member State law, pursuant to Article 14(5)(c): This exemption is conditional upon the law in question providing appropriate measures to protect the data subject's legitimate rights and interests.

2. Purpose limitation and presumption of compatibility

In accordance with Article 5(1)(b) of the GDPR, data must be collected for specified, explicit and legitimate purposes and not processed any further in a manner that is incompatible with those purposes. Additionally, Article 89(1) of the GDPR set out that the processing of data for the purpose of scientific research "*shall be subject to appropriate safeguards for the rights and freedoms of the data subject*", such safeguards ensuring "*that technical and organizational measures are taken to ensure, respect for the principle of data minimisation*", as it is required by Article 32(1) of the GDPR. Such measures should at least consist of pseudonymisation, encryption, non-disclosure agreements, strict access role distribution restrictions, as well as logs.

3. Data minimisation and storage limitation

Although personal data may be stored for longer periods if the personal data are processed solely for achieving scientific purposes, not only should the appropriate technical and organisational measures be implemented in order to safeguard the rights and freedoms of the data subject, but also the storage period should take into account criteria such as the length and the purpose of the research. It should also be noted that the legal provisions of the Member States may lay down specific rules regarding the storage period of information for research purposes.

4. Rights of the data subjects

Situations such as the current COVID-19 outbreak do not suspend or restrict the ability of data subjects to exercise their rights pursuant to Articles 12 to 22 of the GDPR. However, Article 89(2) of the GDPR allows the national legislator to restrict (some) of the data subject's rights. In light of the case law of the European Court of Justice, all restrictions of the rights of data subjects must apply only in so far as it is strictly necessary.

5. International data transfers for scientific research purposes

International cooperation may be required to address the COVID-19 pandemic and this may entail health data being transferred internationally for the purpose of scientific research outside of the European Economic Area.

With regard to health data being transferred internationally, data exporters must for example:

i) Inform data subjects of the intention to transfer personal data to a third country or international organisation. This information includes references to the existence of an adequacy decision issued by the European Commission or whether the transfer is carried out with the appropriate safeguards (Article 46 of the GDPR) or under some exception (Article 49 of the GDPR); and

ii) Assess the risks to the rights and the freedoms of data subjects in relation to each transfer and implement solutions that guarantee data subjects the continuous protection of their fundamental rights and safeguards.

In the absence of an adequate decision or of appropriate safeguards, transfers of personal data may take place, by way of exception only, under one of the derogations provided for in Article 49 of the GDPR. These derogations should always be interpreted restrictively and on a case-by-case basis. In the context of the current health crisis, the GDPR allows using the derogations contained in subparagraphs (a) (explicit consent) and (d) (important public interest reasons) of Article 49(1) of the GDPR. However, while it is true that the nature of the COVID-19 crisis may justify the use of derogations for initial transfers for research purposes in this context, repeated transfers of data to

third countries which are part of a long-term research project will always need to be approved through the necessary safeguards in accordance with Article 46 of the GDPR.

STATEMENT ON RESTRICTIONS ON DATA SUBJECT RIGHTS IN THE CONTEXT OF THE STATE OF EMERGENCY IN MEMBER STATES

In the context of the Hungarian Government's adoption of Decree 179/2020 of 4 May ("**Decree 179/2020**") on the derogation of specific data protection and access to information provisions during the state of danger, on 2 June, the EDPB issued a statement regarding restrictions on data subject rights in the context of any type of state of emergency adopted by Member States at the national level to combat pandemics.

Under article 1 of Decree 179/2020, with respect to personal data processing for the purpose of preventing, understanding and detecting COVID-19 and containing its further spread, including coordination of State bodies in relation to the same, all measures concerning the exercise by data subjects of rights based on Articles 15 to 22 of the GDPR are suspended until the end of the state of danger. Article 5 of Decree 179/2020 establishes that this suspension also applies to all requests to exercise the referred data subject rights that were already pending as of the date this Decree entered into force.

In response to Decree 179/2020, the EDPB stated, as it has previously, that the GDPR not only remains applicable during the exceptional period that is currently occurring but also allows for an efficient response to pandemics without compromising the fundamental rights of EU citizens. Specifically, Article 23 of the GDPR allows, under specific conditions, a national legislature to, through legislation, restrict the scope of the obligations and rights established in the GDPR when those restrictions respect the essence of the fundamental rights and freedoms and are a necessary and proportionate measure in a democratic society to safeguard important public objectives such as public health. As such, even in exceptional times, the protection of personal data must be ensured in all emergency measures and any restriction must respect the essence of the right that is being restricted; therefore, "*restrictions which are general, extensive or intrusive to the extent that they void a fundamental right of its basic content cannot be justified*".

The EDPB noted that the data subject rights of access and rectification are enshrined in Article 8 of the Charter of Fundamental Rights of the European Union ("**Charter**"), with the GDPR also enshrining others, such as the rights to object, to erasure and to data portability. The rights of data subjects cannot be underestimated; they are the core of the fundamental right to privacy. As a consequence, when interpreted in light of Article 52(1) of the Charter, they imply that "*it is essential that legislative measures, which seek to restrict the scope of data subject rights are foreseeable to persons subject to them*" Consequently, measures that do not have a precise time limit and that apply retroactively or are subject to undefined conditions do not meet the foreseeability criterion.

Furthermore, such restrictive measures must genuinely pursue an important objective of general public interest (in this particular case, public health). In this context, the link between the measures and the objective must be "*clearly established and demonstrated*" and, therefore, any restrictions on the rights of data subjects should only apply to the extent they are strictly necessary and proportionate to safeguard public health. The state of emergency, adopted in the context of a pandemic, is a legal situation that may legitimise restrictions on the rights of data subjects, provided those restrictions are proportionate to the safeguarding of public health.

As a result, the EDPB took the view that "*suspending or postponing the application of data subject rights and the obligations incumbent to data controllers and processors, without any clear limitation in time, would equate to a de facto blanket suspension of those rights, and would not be compatible with the essence of the fundamental rights and freedoms.*"

Finally, the EDPB reiterated that, under Article 57(1)(c) of the GDPR, the national supervisory authority should be consulted on the process in a timely manner by national authorities contemplating restrictions under Article 23 of the GDPR and recalled that the European Commission, as the guardian of the Treaties, has the duty of monitoring the application of EU primary and secondary law.

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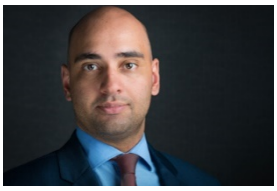

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