

1. Government policy responses

Following the World Health Organization's classification of the public health emergency caused by COVID-19 as an international pandemic, the President of the Republic has declared a state of emergency in Portugal whenever the epidemiological situation justifies it. The state of emergency is based on a situation of public calamity and it covers the whole country. The last renewal of the state of emergency took place on 28 January 2021. It was renewed for a period of 15 days beginning on 31 January 2021 and ending on 14 February 2021, unless it is extended or modified if the evolution of the epidemiological situation justifies it.

In fact, for a time, Portugal was managing to respond well to the epidemiological situation and even suspended some of the exceptional measures initially implemented. However, the situation worsened in January 2021, with over 480 cases of COVID-19 per 100,000 inhabitants in a 14-day period.

As a result, and in the face of a new state of emergency, the Portuguese authorities have approved a new set of exceptional and temporary measures in response to the spread of COVID-19. The measures take into account the existing situation and they are subject to strict criteria of appropriateness and proportionality. Their aim is to protect public health, the functioning of the economy, and access to essential goods for all citizens.

The exceptional and temporary measures applicable to the different sectors, as better described below, are set out in several Laws and Decree-Laws. The urgency in approving various legislative packages and the reaction by different sectors has understandably led to the legislation issued by the Government or by the Assembly of the Republic being reviewed and, where advisable, amended or clarified.

1.1 Justice sector

The exceptional and temporary measures applicable to the justice sector are set out in Law 1-A/2020 of 19 March, in conjunction with Decree-Law 10-A/2020 of 13 March, as amended by Laws 4-A/2020 of 6 April, 4-B/2020 of 6 April, 14/2020 of 9 May, 16/2020 of 29 May, 28/2020 of 28 July, 58-A/2020 of 30 September, 75-A/2020 of 30 December and 1-A/2021 of 13 January and its last amendment (the ninth) made by Law 4-B/2021 of 1 February. These laws establish exceptional arrangements to extend time limits and complete judicial steps. Some of the arrangements were in effect as from 9 March 2020,^{1,2,3} but the new measures take effect on 22 January 2021 (or some other specific date as mentioned below).⁴

1.2 General stimulus packages aimed at protecting employees

Simplified lay-off measure - the possibility of using this support in the event of the total or partial closure of the business or establishment by a legislative or administrative decision is maintained. Employers may place their employees under temporary suspension of employment or reduce their working hours. Impacted employees are guaranteed 2/3 of their salary which is partially paid by the Portuguese social security (70%).⁵ In addition, employers are entitled to a full exemption from paying the social security contributions regarding employees and members of statutory bodies while a closure is in effect.

Extraordinary vocational training - businesses impacted by the COVID-19 crisis that wish to avoid the lay-off measure can apply for an extraordinary vocational training plan in conjunction with IEFP (*Instituto do Emprego e Formação Profissional*), which pays a grant to employees attending the training session, corresponding to number of hours of training received taking into account their hourly remuneration, subject to a maximum cap of EUR 635.⁶

Progressive Resumption Support - this scheme applies to companies in a business crisis situation, which is defined as a fall in turnover of 25% or more, and it ensures the possibility of a temporary reduction in normal working hours (NWH) for all or some employees. This support is now also applicable to members of statutory bodies with management roles.

Any employer considered to be a micro, small or medium sized company is also entitled to a 50% reduction in the payment of contributions for the employees covered. This scheme was in force until 31 December 2020 and is now extended until 30 June 2021.

Support for Normalisation - this support was provided for employers who had previously benefited from the support provided for in Decree-Law 10-G/2020 of 26 March. It consisted of one of two forms: one RMMG (minimum guaranteed monthly wage) per worker covered by the measures, paid in one lump sum, or two RMMGs per worker covered, paid in instalments over six months.

These last two schemes (Progressive Resumption Support and Support for Normalisation) are mutually exclusive until January 2021 but may be used one after the other provided the Progressive Resumption Support is applied for from February 2021.

The above measures are subject to various conditions, notably the prohibition of redundancy dismissals while the measures are applicable and for a period of 60 days after they end.

1.3 Tax obligations

The Portuguese Government adopted some extraordinary tax and social contribution measures aimed at ensuring the liquidity of companies during the COVID-19 pandemic. These measures are

1. https://www.plmj.com/xms/files/03_Novidades_legislativas/2020/04_abril/Coronavirus/ING/Coronavirus_-_Amendment_to_the_exceptional_and_temporary_measures_....pdf
2. https://www.plmj.com/xms/files/03_Novidades_legislativas/2020/04_abril/Coronavirus/ING/Coronavirus_-_Impact_of_the_exceptional_and_temporary_measures_on_....pdf
3. https://www.plmj.com/xms/files/00_Trending_Topics/NL_TT_Coronavirus_-_Restructuring_and_insolvency.pdf
4. <https://www.plmj.com/pt/conhecimento/notas-informativas/Coronavirus-Medidas-excepcionais-e-temporarias-com-impacto-em-materia-de-contencioso/31242/>

5. [NL_TT_Coronavirus_-_Employment_support_measures.pdf\(plmj.com\)](#)
6. <https://www.iefp.pt/covid19>

mainly geared towards allowing greater flexibility in fulfilling tax obligations and social security contributions by companies. The specific measures introduced are summarised in section 4.2 below.⁷

1.4 Funding and liquidity

1.4.1 Credit lines and other support measures

The Portuguese Government has implemented financial measures to support businesses affected by COVID-19 and to guarantee the liquidity and stability of companies (in particular, in the industry and tourism sectors).⁸ This support takes the form of State guarantee schemes (under which the Government will provide a guarantee of between 80% and 90% to financial institutions that provide loans to impacted businesses), and it has been implemented in line with the EC authorisation. These initiatives include:

- EUR 400 million to support eligible SMEs – the full allocation of this credit line has already been exhausted and it was closed on 7 April 2020, but re-opened on 14 January 2021;
- EUR 375 million to support 41,000 micro and small-cap companies that provide retail services open to consumers, catering, accommodation and tourist activities and cultural activities;
- EUR 300 million of non-repayable grants for immediate support during the first half of 2021 for the payment of non-residential rents due by micro, small and medium-sized enterprises;
- EUR 1,050 million to support companies in the tourism sector that have a high percentage of turnover from exports of goods;
- EUR 700 million to support mid-cap and large companies operating in sectors particularly impacted by COVID-19;
- EUR 750 million to support micro and small enterprises operating in sectors particularly affected by exceptional measures approved in the context of the pandemic;
- EUR 750 million to support companies in the industrial sector, regardless of their size, which have a high percentage of turnover from exports of goods and services; and
- EUR 50 million to support micro, small, medium and mid-cap companies whose essential activity consists, in the majority, in the supply of services and goods to support the holding of cultural, festive, sports or corporate events.

Additionally, the Portuguese Government has announced measures to support start-up

companies⁹ with a total value of approximately EUR 267.3 million:^{10,11}

- EUR 8 million to support early-stage start-ups, by providing financial incentives in an amount corresponding to a minimum salary per employee, up to 10 employees;
- EUR 300,000 to extend certain incentives already granted to start-ups for a further three months;
- EUR 4 million to provide incubation services to start-ups, in the amount of EUR 1,500 per company;
- EUR 10 million to provide mezzanine funding, with average tickets between EUR 50,000 and EUR 100,000 per start up;
- EUR 3 million to provide bridge financing, with tickets starting from EUR 50,000;
- EUR 200 million to support late seed and Series A and B start-ups, with co-investment rounds with private investors ranging between EUR 500,000 and EUR 5 million per start up; and
- EUR 42 million to support social impact start-ups, from seed phases to Series A, with co-investment rounds with private investors ranging between 50,000 and EUR 2.5 million per start up.

The Portuguese Government also announced an incentive scheme to support eligible SME's to reorganize and adapt their businesses in the context of Covid-19 measures determined by the health authorities.¹² This support takes the form of non-refundable grants to cover eligible costs:¹³

- in the case of microenterprises, 80% of their eligible costs (from EUR 500 to EUR 5,000); and
- in the case of SME's, 50% of their eligible costs (from EUR 5,000 to EUR 40,000).

To support landlords when, under non-residential tenancies, tenants defer the payment of rents under the arrangements for arrears (see section 1.4.3 below), the law gives landlords the right to benefit from a credit line at reduced costs by reference to the amounts in arrears concerning rents due in 2020 and 2021 that are unpaid. However, this credit line is still pending creation and regulation.

The Portuguese Government has also implemented financial measures to support non-residential tenants impacted by the pandemic. This support takes the form of a non-refundable grant to cover rents due to landlords by eligible tenants.¹⁴ This grant cannot exceed EUR 40,000 per company, and consists of:

7. https://www.plmj.com/xms/files/03_Novidades_legislativas/2020/03_marco/Coronavirus/ING/Coronavirus_-_Tax_impacts.pdf.

8. https://www.plmj.com/xms/files/03_Novidades_legislativas/2020/04_abril/Coronavirus/ING/Coronavirus_-_Credit_lines_for_businesses.pdf.

9. It is expected that 2500 start-up companies will be able to benefit from these measures.

10. <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=ca5bb240-9c0a-449f-b8a7-62e3518abe7d>.

11. <https://www.portugal.gov.pt/pt/qc22/comunicacao/comunicado?i=novas-medidas-de-apoio-ao-ecossistema-de-empendedorismo-no-valor-de-25-milhoes-de-euros>.

12. <https://dre.pt/application/conteudo/133723684>.

13. The filing for this incentive scheme has been suspended since 29 May 2020.

14. Depending on certain criteria, such as field of activity, as determined under Administrative order 271-A/2020, 24 November (as amended on 19 January 2021).

- in the case of tenants with a fall in turnover of between 25% and 40% (in 2020)¹⁵ - 30% of a reference monthly rent, for a six-month period, not exceeding EUR 1,200 per month, per establishment; and
- in the case of tenants with a fall in turnover higher than 40% (in 2020)¹⁶ - 50% of a reference monthly rent, for a six-month period, not exceeding EUR 2,000 per month, per establishment.

In addition, the Portuguese Government has implemented financial measures to support residential tenants (as well as guarantors of residential tenants, if these are non-working students) whose income has been affected by the pandemic – pursuant to certain legal criteria – to assist in the payment of their rents. This support takes the form of loans with the following specific characteristics:

- in the case of tenants who are not considered to be ‘low-income tenants’ or whose effort rate is lower than 35%, the support takes the form of an interest-free loan; and
- in the case of low-income tenants whose effort rate intended for the payment of rent is higher than 35% - the support may be granted in the form of a non-refundable grant.

1.4.2 Loan moratorium

A legal moratorium has been approved and covers all types of lending transactions entered between regulated entities in Portugal and borrowers domiciled in Portugal. The moratorium may apply to principal and interest or just to principal payments at the option of the beneficiary entity.

The moratorium allows borrowers to benefit from a suspension of payment obligations for principal between 31 March and 30 September 2020 (except in relation to companies from particularly affected economic sectors which will benefit from the moratorium for both principal and interest until 30 September). Borrowers can also benefit from a prohibition on total or partial termination of previously approved credit lines until 30 September.

Interest will continue to accrue and will be capitalised. Any security associated with loans subject to a moratorium will also be automatically extended.

Borrowers now have a second chance to apply for the application of a moratorium to their credits until 30 March 2021 up to a maximum period of nine months. In order to benefit from the moratorium, beneficiary entities must (i) not be in more than 90 days’ default with reference to 1 January 2021; (ii) not be in a situation of insolvency or suspension of payments; and (iii) have no debts to the tax authorities or to the social security.¹⁷

These provisions also include a special framework to grant personal guarantees by the State and

to grant mutual guarantees, in view of the economic emergency resulting from the COVID-19 pandemic.

1.4.3 Rent moratoriums and suspension of termination of lease agreements

Exceptional and temporary measures have been adopted concerning lease agreements and other contractual relationships involving the operation of properties,¹⁸ *inter alia*:

- Suspension, until 30 June 2021 of, among others:
 - a) the taking of effect of the early termination of residential and non-residential lease agreements made by the landlord;
 - b) the expiry of residential and non-residential lease agreements, unless the tenant has no objection to the termination of the agreement; and
 - c) the taking of effect of any revocation or opposition to renewal of residential and non-residential lease agreements by the landlord.
- Extension of the end-date of leases concerning establishments that were closed in March 2020 and remained closed on 1 January 2021. In this event, the term of the lease is extended for a period identical to the one in which the establishment remained closed, counted from the original end-date of the Agreement and which must be of at least six months in duration after the closure imposition has been withdrawn. Moreover, the suspensions noted n a) to c) above also apply during the new contractual period.
- Suspension of eviction actions, special eviction procedures, and actions to regain possession of leased property, when, pursuant to the final judicial decision, the tenant could be placed in a vulnerable position.
- Creation of arrangements for situations of arrears in the payment of (i) rent due under urban lease agreements, for residential and non-residential purposes, or (ii) the remuneration payable under other contracts to operate properties for commercial purposes (with effects as from the rents due in April 2020), provided that the tenants and users of the premises meet the legal requirements to benefit from this regime:¹⁹
 - in the case of residential leases, when the tenant is covered by this legislation, the landlord may only terminate the lease agreement for non-payment of rents if the tenant, having deferred the payment of rents by reference to the months from April to June 2020, does not pay this amount, within a period of 12 months from the end of that period, in monthly instalments of not less than one twelfth of the total amount, together with the rent for each month;

15. Compared to the previous year, or, in the case of companies that started activity in the year 2019, compared to the monthly average of the period of activity from 29 February 2020, considering only the full calendar months.

16. Ibid.

17. https://www.plmj.com/xms/files/03_Novidades_legislativas/2021/01_janeiro/NL_TT_Coronavirus_-_Changes_to_financing_moratoriums.pdf.

18. These measures have been progressively adopted and amended from time to time. This review contains a summary of the measures that are currently in force. For more detail regarding the measures that have subsequently been put in force, please see the following documents issued respectively in April 2020, August 2020 and January 2021:

https://www.plmj.com/xms/files/03_Novidades_legislativas/2020/04_abril/Coronavirus/ING/Coronavirus_-_Rent_moratoriums_and_suspension_of_agreements.pdf;
<https://www.plmj.com/en/knowledge/informative-notes/Coronavirus-Payment-of-rents-and-other-remunerations-Deferral-and-new-rules/30984/>;
<https://www.plmj.com/en/knowledge/informative-notes/Coronavirus-New-measures-to-support-tenants/31180/>.

19. In respect of the legal requirements for tenants to benefit from such arrears in the payment of rents, please refer to the documents mentioned in the preceding footnote.

- in the case of non-residential tenancies and other contractual forms of operation of properties for commercial purposes, the tenants and users of properties covered by this legislation were also entitled to defer the payment of certain rents or remuneration (as applicable) that became due until 31 December 2021 and, in particular, (i) in the months in which the state of emergency was in place and in the first subsequent month (that is, the rents due as from April until June 2020),²⁰ (ii) during the period in which the respective establishments were kept closed or their activity was suspended by legal provision or administrative measure approved within COVID-19 pandemic, and (iii) during the three months following the revocation of the requirement to close their premises or the suspension of their activity. In light of the above, the rents whose payment was deferred are being settled as from 1 January 2021 and until 31 December 2022, in 24 monthly instalments of equal amounts, on a *pro rata* basis. These instalments must be paid together with the rent for the month in question or up to the eighth calendar day of each month if the rent is not monthly;
- the tenants of establishments that remained closed on 1 January 2021 are legally entitled to: (i) again defer payment of rents due in 2020, which had already been deferred; and (ii) request the deferment of the payment of rents due in 2021 corresponding to the months in which the establishments are closed. The period for paying the debt corresponding to the rents subject to this deferment only begins on 1 January 2022 and continues until 31 December 2023. The payment must be made in 24 successive and equal instalments to be paid together with the rent for the month in question or up to the eighth calendar day of each month if the rent is not monthly. However, it has been expressly stated that the arrangements described in the preceding paragraph with reference to non-residential tenancies do not apply to establishments in commercial complexes that, meeting the other conditions for the application of these special arrangements, benefit, for the year 2021, from a reduction or discount in the remuneration due under the agreement;
- in the particular case of tenants of stores in shopping centres (i.e. storekeepers), the law provides for a discount in the minimum remuneration due under the shop use agreements in the proportion of the fall in the monthly turnover in 2020 when compared with the turnover obtained during the corresponding month in 2019. The discount cannot exceed 50% of the minimum remuneration. This measure is in force during the first three months of 2021 but may be extended until 30 June 2021 by governmental decree;²¹
- if the landlord – or the owner of the property operated for commercial purposes – is a public body, while this law is in force, it may: (i) reduce the rents for tenants who can prove they have suffered a fall in income of greater than 20% compared with the previous month's income or the income of the same period of the previous year, when this results from an effort rate exceeding 35% in relation to the rent. However, this does not apply when the tenants or users of the property are beneficiaries of special residential lease or rent arrangements, such as rent support and social rent, (ii) exempt tenants from payment of rent if they can prove they have ceased to earn income after 1 March 2020, or (iii) establish moratoriums for their tenants;
- the legal measures mentioned above do not preclude the existence of schemes that are more favourable to the tenant, arising from the law or from an agreement, concluded or to be concluded between the parties, including debt forgiveness agreements or agreements to defer the payment of rents more beneficial to the tenant;
- landlords are currently prevented from enforcing bank guarantees for breach of payment of non-residential rents; and
- in all lease agreements – residential or non-residential –, the right of landlords to demand the compensation provided for when the tenant is in arrears in accordance with the legislation is suspended for the rent payments due in the months when deferred payment was authorized as per the above.

In all lease agreements or agreements to operate properties – residential or non-residential –, the termination of the agreement at the initiative of the tenant / user of the property, the rents / remuneration due and not paid pursuant to the abovementioned regime, become enforceable from the date of termination.

The closure of facilities and establishments as determined by legal provisions or administrative measures, adopted in the pandemic context due to COVID-19, cannot be invoked as grounds for termination of non-residential lease agreements or other contractual forms of operation of properties, nor as legal reason to vacate the facilities where such establishments are installed.

Financial measures to support tenants were also created to assist in the payment of their corresponding rents to landlords (see section 1.4.1 above).

20. The state of emergency was initially in force between 22 March and 2 May 2020. It was reinstated in November 2020 and remains in force to date. Although the law does not clarify whether the payment of rents due during the state of emergency that was in force in November 2020 may be postponed under this right, it has been understood – by some scholars – that the right to postpone the payment of rents due during the state of emergency does not apply in respect of the state of emergency in force in November 2020.

21. Note that storekeepers benefitted until 31 December 2020 from an exemption from the payment of remunerations due under their store use agreements in shopping centres.

2. Legislative reforms impacting on stakeholders dealing with companies in financial distress

2.1 Employees that would be made redundant as a result of financial difficulty triggered by the crisis

Decree-law 10-G/2020 provides that businesses that resort to the simplified lay-off or the extraordinary vocational training plan measures (see section 1.2 above) benefit from financial support of EUR 635 per each employee covered by the one of the above measures.²²

As noted in section 1.2, these measures are subject to various conditions, in particular, a prohibition on redundancy dismissals while the measures are in force and for a period of 60 days after they end.

2.2 Impact on the activities of the companies

The Portuguese Securities Market Commission (CMVM) has issued recommendations intended to promote the broad use of electronic means to hold general meetings remotely. The aim of these recommendations is to prevent or, if that is impossible, minimise the need for attendance at meetings or any form of physical interaction.

Specific duties of care arise in relation to the holding meetings and these apply not only to the chair of the board of the general meeting, but also, and above all, to the directors of the company. The directors are responsible for ensuring the physical and technical conditions that will make it possible to hold the meeting safely and, at the same time, to guarantee the rights of shareholders to participate in it.²³

When it comes to contracts, directors must assess the impact that the spread of COVID-19 could have on complying with the obligations they have already assumed. Depending on the specific contract, there may be grounds to terminate it. In contrast, a default or definitive breach of the obligations assumed may not be considered unlawful. This could be the case, for example, under general legal rules such as those applying to a material adverse change, or in meeting the requirements under a force majeure clause or other similar clause. In any case, through their directors, companies are bound by an ancillary duty to inform the other party to a contract of any current or potential impossibility for them to ensure they comply with the obligations undertaken.

3. Legislative reforms for companies in financial distress

As mentioned above, the urgency in approving various legislative packages and the reaction by different sectors has understandably led to the legislation issued by the Government or by the

Assembly of the Republic being set out in several Laws and Decree-Laws, which are also being reviewed and, where advisable, amended or clarified. As such, depending on the exceptional arrangements in question, their effects have different starting dates (i.e., sunset dates). For example, as a rule, the new exceptional and temporary measures applicable to the justice sector take effect as from 22 January 2021.²⁴

3.1 Revision of obligations of directors and managers

Insolvency proceedings can be brought either by any creditor or by the debtor itself. Company directors / management have a legal obligation to submit an application for insolvency within 30 days of becoming aware of the insolvency situation²⁵ (under article 18(1) of the Insolvency and Corporate Recovery Code). Breach of this legal obligation could lead to the insolvency being classified as culpable.

Law 1-A/2020, with the wording introduced by Law 4-A/2020, suspended the time limit for the debtor to petition for insolvency, with effect from 7 April 2020. Law 16/2020 of 29 May maintained that suspension and the most recent amendment, resulting from Law 4-B/2021 of 1 February, also provides for the (maintenance of the) suspension. However, there is no impediment to the debtor itself or any creditor beginning insolvency proceedings.

3.2 Adoption of any other pre-insolvency measures

In Portugal, the PER (Special Revitalisation Process) and the RERE (Out-of-court Business Recovery Scheme) are the key pre-insolvency measures for companies, respectively of a judicial and out of court nature. If a company is only in a difficult economic situation or facing imminent insolvency, but still capable of recovery, it can use the PER or RERE to try to recover by adopting a recovery/restructuring plan.

The current legislation does not allow a company to have recourse to a new PER if the decision to approve the recovery plan in force was made less than two years ago. There is an exception for situations in which the company has fully implemented the plan or in which there are factors unrelated to the plan itself and where the subsequent change is outside the control of the company. COVID-19 could be considered an event of force majeure because it is unpredictable and totally unrelated to the regular operations and decisions made by companies. Therefore, the current situation could justify recourse to a new PER, even if the minimum two-year period has not yet passed.

But as the economic crisis worsened, it quickly became clear that a further legislative response was needed in this area too.

22. <https://www.iefp.pt/covid19>.

23. https://www.plmj.com/xms/files/00_Trending_Topics/NL_TT_Coronavirus_-_Impact_on_the_activities_of_companies.pdf.

24. <https://www.plmj.com/pt/conhecimento/notas-informativas/Coronavirus-Medidas-excepcionais-e-temporarias-com-impacto-em-materia-de-contencioso/31242/>.

25. A company is insolvent when it is not able to pay the debts that have fallen due. Under the Portuguese Insolvency and Corporate Recovery Code (so called "CIRE"), a company is insolvent when at least one of the following facts is verified: (a) the company has generally suspended payment of its debts that have fallen due; (b) failure to meet one or more of its obligations which, because of their amount or the circumstances of the default, are capable of demonstrating that the company is incapable of meeting the majority of its commitments; (c) disappearance of the company's owner or directors, or abandonment of the company's headquarters or main place of business; (d) asset dissipation or fictitious constitution of debt; (e) insufficiency of assets for seizure to secure payment of debts under enforcement proceedings; (f) breach of the obligation laid down in an insolvency plan; (g) delay in paying its debts to one of the following, within the previous 6 months: (i) tax authority, (ii) social security, (iii) employees, (iv) leasing rents or instalments of facility agreements for acquisition of or related to the company's headquarters or to the main place of business, secured by the relevant mortgage; (h) the company's liabilities substantially exceed its assets in the last approved balance sheet or the company is late for more than nine months in approving and filing its accounts at the Commercial Registry Office.

The Portuguese government could have chosen to adapt the arrangements that already existed – the PER and the RERE – or it could have implemented Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019.

However, this did not occur.

Instead, the Portuguese Government elected to create a new extraordinary legal framework, aimed exclusively at companies that are in a difficult economic situation or an insolvency situation, whether imminent or current, due to COVID-19 and that are viable: the PEVE (Extraordinary Business Viability Process).

The PEVE is one of the measures provided for in the Economic and Social Stabilisation Programme, which is a plan by the Portuguese Government to respond to the economic and social difficulties caused by COVID-19 and is established in Law 75/2020 of 27 November, which came into force on 28 November and will remain in force until 31 December 2021, although it may be extended.

The aim of the PEVE is to obtain judicial approval of a debt restructuring agreement (Viabilisation Agreement) established out of court between the company and its creditors.²⁶ As such, it is a hybrid procedure.

The approval decision binds the company, the creditors signing the agreement and the creditors in the report of creditors, even if they have not participated in the out-of-court negotiations.

At the time the application is submitted, the company may not have any PER pending. In addition, it must meet and prove it has met the conditions necessary for its viability. It must also provide proof that, on 31 December 2019, the company's liabilities were less than its assets. That is, in practice, it must provide evidence that its difficulties stem from the pandemic. However, the law does provide for two exceptions: (i) micro and small businesses, where the liabilities may exceed the assets provided certain additional conditions are met; and (ii) businesses which, although not in a positive net position on 31 December 2019, have managed to regularise their financial situation under the transitional provisions allowing the use of the RERE by businesses in a situation of insolvency, provided they have deposited the restructuring agreement in due time.

In order to ensure that it is processed particularly quickly, in addition to shortening the time limits and eliminating the phase of claiming credits, priority is given to this extraordinary procedure over the other equally urgent procedures (insolvency proceedings and the PER).

In addition, the Government has decided to make one-off changes to provide the existing judicial instruments for recovery with mechanisms for adapting to the pandemic: (i) the possibility to grant additional time for the conclusion of the negotiations within the framework of the PER and for the proponent of an insolvency plan to adapt it;²⁷ (ii) the application of the RERE to companies

that are currently insolvent as a result of the pandemic but which are still likely to become viable and which can demonstrate that, on 31 December 2019, their assets exceeded their liabilities or, although not in a positive net position on 31 December 2019, have managed to regularise their financial situation under the transitional provisions allowing the use of the RERE by companies in a situation of insolvency, provided they have deposited the restructuring agreement in due time;²⁸ and (iii) in cases where non-compliance with the approved insolvency plan is based on events occurring after 7 April 2020, the 15-day period to regularise the situation – failing which the moratoriums and forgiveness set out in it will be extinguished – will only begin to run after the law now approved ceases to be in force.²⁹

There are two other measures which are easy to implement. Their sole aim is to respond immediately to the problem of the lack of liquidity of companies, because they involve the distribution to the creditors, as soon as possible, of large sums deposited in PER and insolvency proceedings (i.e., amounts due to the creditors but in the hands of the State):

- a) the obligation to carry out partial disbursements in all pending insolvency proceedings in which the liquidation proceeds deposited are in excess of EUR 10,000;³⁰ and
- b) the conferment of priority to the processing of applications for the release of securities or guarantees provided under insolvency proceedings or PER.³¹

Moreover, the suspension of deadlines and procedures resulting from Law 1-A/2020, in the wording introduced by Law 4-A/2020 and Law 4-B/2021 (with effects from 9 March till 2 June 2020 and from 22 January 2021), does not apply to the periods (including grace periods and payment deadlines) established in recovery plans that have already been approved and ratified by the courts.

In any case, if companies anticipate that it will be impossible to comply with their obligations, or to comply with them on time, and no exceptional measures could apply, they should seek to justify their non-compliance in order to avoid claims of insolvency or other undesirable judicial actions.

The RERE is a non-urgent out-of-court business recovery scheme and it was subject to the rule on suspension of time limits to do acts resulting from article 6-C (1) (a) of Law 1-A/2020 with the wording introduced by Law 4-B/2021.

3.3 Changes to the insolvency process

There have been no legislative changes regarding the insolvency process or even the criteria used to assess whether a company is in an insolvency situation (and this is not expected to occur). Thus, in general terms, a company continues to be in an insolvency situation when it is unable to meet its obligations as they fall due. This is particularly so when there is a general failure

26. Creditors representing at least the majority of votes provided for in article 17-F (5) of the CIRE (article 7 (1) (d) of Law 75/2020 of 27 November 2020.

27. Articles 2 and 4 of Law 75/2020 of 27 November 2020.

28. Article 5 of Law 75/2020 of 27 November.

29. Article 4 (2) of Law 75/2020 of 27 November.

30. Article 16 of Law 75/2020 of 27 November.

31. Article 11 of Law 75/2020 of 27 November.

by the company to pay its debts to the tax and customs authority or the social security, to its employees, or to the landlord or mortgage lender of the premises where the company operates. However, there is an exception regarding the suspension / extension of deadlines to meet certain obligations (see some examples in sections 1.4 and 2.2 above and section 4.2 below).

Under wording of article 7 of Law 1-A/2020,³² introduced by Law 4-A/2020, urgent processes (which include insolvency and the PER) were to continue without suspension or interruption of time limits, acts and other steps, provided they meet certain conditions.³³ This rule is again set out in the new arrangements of Law 4-B/2021 (under current article 6-B (7), introduced by Law 4-B/2020), and is in force from 22 January 2021.

However, the acts to be carried out in the insolvency proceedings in connection with the taking possession under a court order of the family home or leased property are suspended. This may cause obstacles in the liquidation of the assets of the insolvent estate and the consequent processing of the insolvency proceedings, and thus cause greater delays in concluding them (article 6-B (11) of Law 4-B/2021).

As stated in section 3.2, Law 75/2020 establishes the obligation to carry out partial disbursements in all pending insolvency proceedings in which the liquidation proceeds deposited are in excess of EUR 10,000.

4. Financial and regulatory measures

4.1 Financial sector measures implemented by the regulators

The Bank of Portugal formally implemented the EBA Guidelines (EBA/GL/2020/02) on treatment of public and private moratoria in light of COVID-19 measures. They include the conditions for the application of a private or public moratorium in order to not be classed as a debtor's situation of default or not to be deemed a forbearance measure in the context of the Capital Requirements Regulation (Regulation (EU) No 575/2013). These guidelines thus adapt the prudential regulation to the impact of COVID-19 pandemic in order to mitigate the impact of the measures adopted in this context on compliance with prudential requirements.

The Bank of Portugal also issued a recommendation for the entities subject to its supervision not to distribute dividends until at least October 2020.

4.2 Specific measures that have been implemented

4.2.1 Delayed tax payment treatment

The most relevant measures are:

- i) where subject to a 20% or 40% turnover decrease, Portuguese companies can choose not to pay (in full or in part) the first and second CIT payments on account in 2020 (applied also to groups);
- ii) possibility for payment to be split into three or six monthly instalments (with no guarantee or interest applicable) for VAT payments and payment of PIT and CIT withholding tax due to the Portuguese Tax Authorities due during April;³⁴
- iii) companies required to file VAT returns on a monthly basis may, during the first half of 2021, make their VAT payments in three or six monthly instalments of EUR 25 or more, without interest; and
- iv) companies required to file VAT returns on a quarterly basis (i.e., companies with an annual turnover of less than EUR 650,000) may, during the first half of 2021, make their VAT payments in three or six monthly instalments of EUR 25 or more, without interest.

The measures described in i) above are applicable to all taxpayers. The measures described in ii) above are available to companies that fulfil one of the following conditions:

- a) turnover of up to EUR 10 million in 2018;
- b) companies that started or restarted their activity on or after 1 January 2019;
- c) companies whose activity falls within sectors closed under Decree-Law 2-A/2020 (for example, recreational activities, leisure and entertainment, cultural and artistic activities, sports, etc.); and
- d) other companies if they can demonstrate that they have suffered a decrease in turnover of at least 20% on the average revenues of the preceding months from the month in which the payment obligation arises, compared to the same period in the previous year.

The measures described in iii) above are available to companies that meet one of the following conditions:

- a) have a turnover of up to EUR 2 million in 2019;
- b) have started or restarted their activity on or after 1 January 2020; and
- c) are able to demonstrate that they have suffered a decrease in turnover of at least 25% on the average monthly turnover reported in the *e-fatura* system during the year of 2020, compared to the same period in the previous year.

32. In the meantime, article 7 was repealed by Law 16/2020 of 29 May, which came into force on 3 June 2020.

33. In general terms, it is possible to do certain acts, either in person or remotely, provided all parties believe they are in a position to ensure they can use IT platforms to do them electronically or by means of distance communication.

34. The assessment of VAT due on periodic monthly and quarterly VAT returns may be carried out on the basis of the data contained in the *e-fatura* system. It does not require supporting documentation (i.e., physical documents) whenever the taxable person uses the *e-fatura* system. Note that taxable persons who meet the above requirements have the possibility to replace any monthly periodic VAT return (as above stated) up to 20 December 2020, without any penalties.

4.2.2 Other relevant tax measures

The other relevant tax measures approved include:

- i) No Stamp Tax on the extension of commercial loans/private residential loans, including corresponding guarantees (unless the extension of the loan term implies a change in the applicable rate, in which case the rate differential will apply);
- ii) full exemption or reduced VAT rate (6%) on surgical masks and sanitizing gel;
- iii) gifts or donations granted to Hospital Entities (EPEs) are considered deductible expenses at the level of the companies that grant them, limited to a maximum threshold of 8/1000 of the sales made or services rendered;
- iv) tax losses accrued during FY 2020 and FY 2021 are carried forward for an extended period of 12 years (up from 5 years) and their set-off will be limited to 80% of the taxable profits of each year (up from 70%);
- v) deduction of tax losses carried forward during FY 2020 and FY 2021 will not be subject to timing limitations;
- vi) special investment tax credit – tax credit permitting a 20% CIT deduction of eligible investment costs between 1 July and 30 June 2021 (cap at 70% of the CIT due) limited to EUR 5 million costs (i.e., EUR 1 million of tax credit);
- vii) Between 1 January 1st and 31 March, the following measures are applicable:
 - a) tax enforcement proceedings which are to be or which have been started are suspended, regardless of whether they are or have been brought by Tax or Social Security Authorities;
 - b) the Tax Authority is barred from lodging guarantees and is prohibited from offsetting credits due to taxpayers against their tax debts;
 - c) the expiration and limitation periods laid down for all types of procedures occurring in the context of a tax enforcement procedure are to be suspended; and
 - d) ongoing instalment plans implemented to settle Social Security debts, beyond the framework of tax enforcement procedures, will also be suspended; and
- viii) possibility of PIT and CIT debts up to EUR 5,000 and EUR 10,000, respectively, to be paid in monthly instalments, without the need for a guarantee.

4.2.3 Tax measures applicable only to small and medium-sized enterprises (SMEs)

- i) The suspension of payments on account of final CIT liability for FY 2020;
- ii) Possibility for payment to be split into three or six monthly instalments (with no guarantee or interest applicable) for social security contributions due by employers between November and December 2020, to July 2021;
- iii) Full refund of the CIT special payments on account that were not deducted until FY 2019, before exceeding the existing 90-day deadline counted from the submission of the CIT return;
- iv) The refund of VAT, CIT and PIT whenever the tax paid via assessment (VAT) or withholding tax (CIT and PIT) exceeds the final tax liability must be paid within a maximum of 15 days;
- v) The special payments on account made in FY 2014 to FY 2019 which have not been deducted until FY 2019 may be refunded. The refund may be granted upon a request to be filed by 31 January 2021 or until the sixth month after the deadline for the submission of tax returns if the company's tax period in 2019 was different from the calendar year;
- vi) Tax losses in mergers of SMEs – special rules for mergers of qualifying SMEs (with similar activity) that lift the current limitations on the transfer of tax losses based on net asset value and exempts these companies from state surtax within a three-year period; and
- vii) Safe-harbour for acquisition of SMEs – new safe-harbour scheme for carry-forward of tax losses when the acquired company is an SME that qualifies as a “company in difficulty” (no forfeit of the tax losses upon change of control) and the transaction occurs before 31 December 2020.

4.2.4 Relaxed regulatory requirements

No measures have been implemented as of this date in relation to regulatory requirements.

5. Specific measures for micro and small businesses

Please see the exceptional measures regarding credit lines for SMEs, small mid-cap and mid-cap companies in general, and for start-up companies, outlined in section 1.4 above.

5.1 Reforms adopted for personal bankruptcy

No special measures have been implemented as of this date in relation to personal insolvency framework. However, as already stated, there is an exception regarding the suspension /

extension of certain deadlines to meet certain obligations, which also applies to individuals (see some examples in sections 1.4 and 4.2 above).

6. Measures introduced by the courts to deal with increased insolvency cases

No special measures have been implemented to date in order to deal with an increase in insolvency cases – despite the creation of the PEVE, the new *fast track recovery procedure* (see section 3.2 above).

Urgent procedures, including insolvency matters, continue to be handled, with no suspension or interruption of time limits, acts or steps. However, due to the exceptional suspension of the obligation to submit an application for insolvency and the other exceptional and temporary measures implemented in response to the crisis caused by COVID-19, Portugal has not yet seen a significant increase in insolvency cases.

More generally, the exceptional and temporary measures applicable to the justice sector set out in Law 1-A/2020, in conjunction with Decree-Law 10-A/2020, as amended by Law 4-B/2021 (also applicable to insolvency proceedings), had already established the conditions for dealing with processes and doing acts either in person or remotely. This can happen when all parties believe they are in a position to deal with these things using the IT platforms that make it possible to do them electronically – the majority of the steps of the proceedings in general are already taken using the official platform of the courts (*Citius*) – or by distance communication, including teleconferencing, video calls or similar (such as Webex or Skype).

In steps that have to be recorded (such as preliminary or trial hearings), it is necessary to use either (i) the videoconferencing systems that exist in the courts, or (ii) Webex (virtual rooms), licensed by the Institute of Financial Management and Justice Equipment (IGFEJ). These allow the parties and others involved in the case to take part using videoconferencing.

When it is not possible to carry out procedural steps remotely because they require the physical presence of the parties, their lawyers or other people involved in the case and the life, physical integrity, mental health, freedom or the immediate survival of those involved is at issue, the step can be held in person. However, this must not result in the presence of a number of people greater than provided for in the recommendations of the public health authorities.

In the wake of these recommendations, the Superior Council of the Judiciary has issued guidelines to help implement the social distancing measures. These guidelines address, among others:

- (i) the maximum number of persons present and the distance between them;

- (ii) the minimum size of courtrooms;
- (iii) a limitation on the presence of the public and others who are not strictly necessary to the procedure in question;
- (iv) a limit on the number of witnesses per procedure / day;
- (v) the use of masks and / or visors;
- (vi) daily cleaning and disinfection of courtrooms; and
- (vii) adoption of respiratory etiquette procedures.

7. Other pending reforms

As the tax measures adopted by the Portuguese Government are essentially tax deferral measures, other measures that would effectively reduce the tax burden could be envisaged in the future.

The current economic situation caused by the COVID-19 pandemic is affecting numerous Portuguese and international companies acting in Portugal. In insolvency matters, the only direct exceptional measure already adopted is the suspension of the obligation to submit an application for insolvency and the obligation to carry out partial disbursements in all pending insolvency proceedings.

The creation of the PEVE (outlined in section 3.2 above), approved by Law 75/2020, could possibly finally allow companies to make use of the opportunities enshrined in the Law, in the hope that they can meet their needs and contribute to a possible and necessary recovery, at least for a large majority.

We are also expecting to see increased demands on the courts to analyse the criteria set out in the Insolvency and Corporate Recovery Code. It is expected, for example, that there will be greater tolerance for possible breaches that may arise in this period of pandemic and certainly more attempts to use the *fast track recovery procedures* to avoid insolvency.
