



MAR. 20

**BANKING AND FINANCE**

# Coronavirus: Moratorium on financing agreements

In the context of the COVID-19 pandemic, the Portuguese Government approved Decree-Law no. 10-J/2020, of 26 March (the "Decree-Law") which establishes a moratorium on certain financing agreements with a view to protect the liquidity of companies and families.

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## 1. Beneficiary Entities

The eligible beneficiary entities (the “Beneficiary Entities”) are:

- a) companies with registered office and economic activity in Portugal, other than those operating in the financial sector, provided that such companies:
  - i) as of 18 March 2020, were not in breach or default in respect of instalments for more than 90 days (or below the materiality thresholds set out in the Notice of the Bank of Portugal no. 2/2019 and in Regulation (EU) 2018/1845 of the European Central Bank);
  - ii) are not in a situation of insolvency or suspension of payments or having their credits subject to enforcement procedures;
  - iii) have no debts to the tax authorities or to the social security;
- b) individuals, in relation only to residential loans, who:
  - i) as of 27 March, are not in default of payment obligations under the relevant loan for more than 90 days (or are not above the materiality thresholds set out in the Notice of the Bank of Portugal no. 2/2019 and in Regulation (EU) 2018/1845 of the European Central Bank);
  - ii) are not in a situation of insolvency or suspension of payments or subject to enforcement proceedings;
  - iii) have no debts to the tax authorities or to the social security; and
  - iv) reside in Portugal,

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provided such individuals fall under one of the following situations:

- i) are in prophylactic isolation or ill; or
- ii) are caring for children or grandchildren; or
- iii) their normal working period has been reduced; or
- iv) there has been a suspension of their employment contract; or
- v) are unemployed and registered with the IEFP (Institute for Employment and Professional Training); or
- vi) are workers eligible for the extraordinary support for the reduction of the economic activity of self-employed workers; or
- vii) are workers of entities whose establishment or activity has closed due to the state of emergency;

- c) individual employers, private charities, non-profit associations and other social economy entities, with the exception of those subject to oversight under the Mutualist Associations Code, who:
- i) as of 27 March, are not in breach or default of instalments for more than 90 days (or are not above the materiality thresholds set out in the Notice of the Bank of Portugal no. 2/2019 and in Regulation (EU) 2018/1845 of the European Central Bank);
  - ii) are not in a situation of insolvency or suspension of payments or subject to enforcement proceedings;
  - iii) have no debts to the tax authorities or to the social security; and
  - iv) reside in Portugal,

**"Individuals who qualify as Beneficiary Entities will only be able to apply the moratorium regime to residential loans for private dwelling purposes, not generally to consumer loans."**

The Decree-Law clarifies that the entities operating in the financial sector, which are outside of the scope as beneficiaries, consist of banks and other credit institutions, financial companies, payment institutions, e-money institutions, financial intermediaries, investment companies, collective investment schemes, pension funds, securitisation funds and their management companies, securitisation companies, insurance and reinsurance companies and public debt management bodies with the same status as credit institutions.

## 2. Affected Institutions

The affected financial institutions ("Affected Institutions") are:

- i) credit institutions;
- ii) financial credit companies;
- iii) investment companies;
- iv) investment companies;
- v) leasing companies;
- vi) factoring companies; and
- vii) mutual guarantee companies,

provided that they have their registered offices or operate through a branch in Portugal.

## 3. Eligible financing agreements

All credit transactions granted by the Affected Institutions to Beneficiary Entities, other than:

- i) financing granted for the purchase of financial instruments;
- ii) financing granted to beneficiaries of schemes, subsidies or benefits, namely tax benefits, for the establishment of head office or residence in Portugal; and
- iii) credit card debt of companies for individual use by members of the social bodies or employees,

are in scope of this regime.

The Decree-Law does not expressly include bonds issuances and commercial paper. However, in our view, these should be subject to the moratorium if the subscribers and holders consist exclusively of Affected Institutions.

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Individuals who qualify as Beneficiary Entities will only be able to apply the moratorium regime to residential loans for private dwelling purposes, not generally to consumer loans. With regards to corporate financing, there is no limitation as to the financing's purpose.

While it appears *prima facie* that the regime does not envisage its application to loans granted by EU entities under the freedom to provide services, there is uncertainty in this respect which will need to be clarified by the regulators.

#### 4. Moratorium

The moratorium will allow Beneficiary Entities to obtain the suspension of payment obligations until 30 September 2020 (including repayment of principal, payment of interest and fees) under:

- i) contracts with instalment repayments; and
- ii) in bullet contracts that mature during this period.

Interest will continue to accrue and will be capitalised, and the Beneficiary Entities will be entitled to apply the moratorium only to principal repayment. Any security associated with loans subject to moratorium will also be extended.

While the moratorium is effective, Affected Institutions will not be entitled to accelerate the debt or declare a default.

Moreover, Affected Institutions to declare the ineffectiveness of, or terminate, security or guarantees granted by Beneficiary Entities or third parties. Any extension of any security subject to registration shall be carried out by the Affected Institution.

Another important measure approved by the Decree-Law relates to the prohibition of total or partial termination, until 30 September, by Affected Institutions of previously approved credit lines. However, the Decree-Law does neither impose an obligation on Affected Institutions to renew credit lines that cease during this period nor, in our opinion, impose the acceptance of requests for disbursement or advances, provided that the

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refusal is based on the terms already set out in the agreement (for example, non-verification of disbursement conditions).

The moratorium does not prevent Affected Institutions from exercising their rights in the event that a given Beneficiary Entity is declared insolvent, is submitted to a recovery plan (judicial or extrajudicial) during the effectiveness of the moratorium.

#### 5. Procedure for access to the moratorium

In order to access the moratorium, the Beneficiary Entity shall submit a declaration signed by its legal representative, together with the documentation evidencing the non-existence of tax and social security debts.

Affected Institutions should apply the moratorium within a maximum of 5 working days from the date of receipt of the declaration, which will be effective as of the date of the delivery by the Beneficiary Entity. Application of the moratorium shall only be rejected if the Affected Institution verifies that the Beneficiary Entity does not meet the requirements detailed above. The communication of non-acceptance must be sent by the Affected Institution within 3 working days of receipt.

**"The Decree-Law provides that the Bank of Portugal shall regulate the information duties applicable to the Affected Institutions in relation to transactions covered by the Decree-Law."**

## 6. Supervision and reporting duties

The Bank of Portugal is the entity responsible for supervising and monitoring access to the moratorium framework. Failure by the Affected Institutions to comply with this framework may result in the application of sanctions.

The Affected Institutions have the duty to report to the Central Credit Registry all exposures to which the moratorium framework applies.

The Decree-Law provides that the Bank of Portugal shall regulate the information duties applicable to the Affected Institutions in relation to transactions covered by the Decree-Law.

## 7. State guarantees and mutual guarantees

The Decree-Law also provides for a special framework for the granting of personal guarantees by the State, and the granting of mutual guarantees, in view of the economic emergency resulting from the Covid-19 pandemic. ■