



BANKING AND FINANCE

Coronavirus: Financing moratoriums

To combat the economic consequences of the COVID-19 pandemic, the government approved Decree-Law 10-J/2020 of March 26 (the “**Decree-Law**”). The Decree-Law established a set of economic measures to protect liquidity and treasury, and in this document, we focus on the financing moratorium.

Since it was first published, the Decree-Law has been amended by Law 8/2020 of April 10, Decree-Law 26/2020 of June 16, Law 27-A/2020 of July 24 and Decree-Law 78-A/2020 of September 29, so we will now summarise the moratorium rules currently in force.

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1. BENEFICIARY ENTITIES

For the purposes of the Decree Law, the Beneficiary Entities are:

a) All companies with their registered office and economic activity in Portugal, except those in the financial sector, provided that:

(i) As at 18 March 2020, they have not been in arrears or in breach of financial obligations to the Institutions for more than 90 days (or, if they are, they do not exceed the materiality thresholds set out in Notice of Banco de Portugal 2/2019 and Regulation (EU) 2018/1845 of the European Central Bank).

(ii) They are not in a situation of insolvency or of suspension or cessation of payments, or

(iii) On that date, the credits are not already subject to enforcement; and

(iv) They do not have tax or social security debts.

b) Individuals, in respect of mortgages (home loans) for permanent owner-occupied homes, who meet all of the following conditions:

(i) On the date of publication of the Decree-Law, they have not been in arrears or in breach of financial obligations for more than 90 days to the Institutions (or, if they are, they do not exceed the materiality thresholds set out in Banco de Portugal Notice 2/2019 and Regulation (EU) 2018/1845 of the European Central Bank).

(ii) They are not in a situation of insolvency or of suspension or cessation of payments.

(iii) On that date, the credits are not already subject to enforcement; and

(iv) They do not have tax or social security debts.

Additionally, they must be in at least one of the following situations:

(i) They are in preventive or disease isolation.

(ii) They are providing assistance to children or grandchildren.

(iii) Their normal working hours have been reduced.

(iv) Their employment contract has been suspended.

(v) They are registered unemployed at the IEFP.

(vi) They are workers eligible for extraordinary support for a reduction in the economic activity of the self-employed.

(vii) They are workers of entities whose establishment or activity has been closed under the decree of the state of emergency.

(viii) They have suffered a temporary drop in overall household income of 20% or more as a result of the pandemic.

c) The beneficiaries of these arrangements are private social solidarity institutions, non-profit associations, and other entities in the social economy, except for entities subject to supervision under the Code of Mutual Associations, provided that:

(i) As at 18 March 2020, they have not been arrears or in breach of financial obligations for more than 90 days to the Institutions (or, if they are, they do not exceed the materiality thresholds set out in Notice of Banco de Portugal 2/2019 and Regulation (EU) 2018/1845 of the European Central Bank).

(ii) They are not in a situation of insolvency or of suspension or cessation of payments.

- (iii) On that date, the credits are not already subject to enforcement;
- (iv) They do not have tax or social security debts.
- (v) They have their domicile or registered office in Portugal.

Together with paragraphs a) to c), these are the “Beneficiary Entities”.

For the purposes of the exclusion contained in sub-paragraph a) above, it is clarified that, under the terms of the Decree-Law, the financial sector includes banks and other credit institutions, financial companies, payment institutions, electronic money institutions, financial intermediaries, investment companies, collective investment undertakings, pension funds, securitisation funds and their management companies, credit securitisation companies, insurance and reinsurance companies, and public debt management bodies, with status equivalent to that of credit institutions.

2. INSTITUTIONS

For the purposes of the Decree Law, the Institutions are:

- (i) credit institutions
- (ii) financial companies providing credit
- (iii) investment companies
- (iv) financial leasing companies
- (v) factoring companies
- (vi) mutual guarantee companies

Provided they have their registered office or operate through a branch in Portugal, these are the “Institutions”.

3. CREDITS COVERED

All credit operations and financial or operational leasing contracts granted by institutions, except for (i) credit granted to purchase financial instruments, (ii) credit granted to beneficiaries of schemes, subsidies or benefits, including tax benefits, to establish their registered office or residence in Portugal, and (iii) credit granted under credit cards to companies for individual use by members of corporate bodies and employees.

The Decree Law does not expressly cover bond issues. However, it seems possible to argue that the moratorium rules apply to bond or commercial paper issues by a Beneficiary Entity whose subscriber(s) or holder(s) are exclusively Institutions.

It should be noted that, as Beneficiary Entities, individuals can only apply the moratorium to housing credit, leasing of real estate for housing purposes, and consumer credit with educational scope, both academic and professional. There are no limitations on the purposes of financing to companies.

4. MORATORIUMS

The moratorium rules set out in the Decree-Law allow Beneficiary Entities to obtain the suspension of payment of monetary obligations until 30 September 2021 under contracts with repayment by instalments and under bullet contracts that fall due during this period. From 1 April 2021, the moratoriums will only suspend the repayment of capital and the payments of interest and commissions will only be suspended in the following cases:

- (i) mortgages and financial leasing of residential property;
- (ii) consumer credit with educational scope, both academic and professional; and
- (iii) operations contracted by Beneficiary Entities whose main activity corresponds to a CAE contained in the list annexed to Decree-Law 78-A/2020.

"The moratorium rules set out in the Decree-Law allow Beneficiary Entities to obtain the suspension of payment of monetary obligations until 30 September 2021 under contracts with repayment by instalments and under bullet contracts that fall due during this period. From 1 April 2021, the moratoriums will only suspend the repayment of capital and the payments of interest and commissions will only be suspended in specific cases."

The interest to which the moratorium applies will continue to fall due and will be capitalised. Beneficiary Entities may ask to suspend only capital reimbursements, in whole or in part, and the guarantees are automatically extended by the term of the suspension.

When a Beneficiary Entity benefits from the moratorium rules, the Institution will not be entitled to:

- (i) declare a breach of contract;
- (ii) trigger early maturity clauses.

The application of these rules will also not result in the ineffectiveness or termination of the guarantees granted by the Beneficiary Entities or by third parties. These guarantees include personal guarantees (fiança and aval guarantees). The extension of guarantees for the period provided for in the Decree-Law is fully effective and enforceable against third parties. If necessary, the extension of guarantees must be registered by the Institution or Institutions in question.

Another important measure approved by the Decree-Law is the prohibition on the full or partial revocation by the financial institutions of contracted credit lines until 30 September. However, the Decree-Law does not impose any obligation to renew credit lines that come to end during this period. In our opinion, it also does not

make it mandatory to accept any requests for disbursement or advances, provided the refusal is based on the terms already established in the contract (for example, not meeting the conditions for disbursement).

It should be noted that the moratorium rules do not prevent the Institutions from exercising all their rights in the event that a given Beneficiary Entity is declared insolvent, is submitted to a PER (Special Revitalisation Process) or RERE (Out-of-court Business Recovery Scheme) during the moratorium period.

The last amendment to the moratorium rules introduced a limitation, under penalty of the moratorium rules ceasing to apply, on the distribution of profits, the reimbursement of credits to shareholders, and the acquisition of own shares or quota shares. We believe this limitation is effective as of 30 September 2020, so any occurrence of any of the situations described above as of 30 September 2020 (inclusive) will mean the moratorium rules cease to apply. On the contrary, if any of these situations occurred in relation to a Beneficiary Entity before this date, the rules will not cease to apply.

5. PROCEDURE TO ACCESS THE MORATORIUMS

Applications for moratoriums must be made by 30 September 2020, by physical or electronic means. The Beneficiary Entity has to submit an application signed by its legal representative, accompanied by the documentation proving it has no tax or social security debts.

The Institutions must apply the moratorium within a maximum of 5 working days of the date of receipt of the application and it has retroactive effect to the date of submission of that application. The application may only be rejected if the Institution establishes that the Beneficiary Entity does not meet the conditions necessary to benefit from the moratorium. Then, the communication of non-acceptance must be sent by the Institution within 3 working days and must be sent by the same means as the application.

For Beneficiary Entities that currently benefit from the moratorium, the renewal is automatic and does not require any action.

If any of the entities referred to in the previous paragraph (i) does not intend to benefit from the extension of the moratorium period, or (ii) intends to cease the application of the moratorium before its legally established end, it must communicate this to the Institution in question at least 30 days before the date on which it intends the effects of the moratorium to come to an end.

6. SUPERVISION AND REPORTING DUTIES

Banco de Portugal is responsible for supervising and monitoring access to the moratorium system. If Institutions fail to comply with the rules, sanctions can be applied.

The Institutions have the duty to report all exposures to which the moratorium applies to the Central Credit Register.

The Decree-Law provides that Banco de Portugal must regulate the information duties applicable to the Institutions by virtue of the operations covered by the exceptional measures provided for in the Decree-Law.

7. STATE PERSONAL GUARANTEES AND MUTUAL GUARANTEES

The Decree-Law also establishes special rules for the granting of personal guarantees by the State, and the granting of mutual guarantees, due to the economic emergency resulting from COVID-19 and the additional and extraordinary pressure it puts on Portuguese businesses.

"The distribution of profits, the reimbursement of credits to shareholders, and the acquisition of own shares or quota shares will mean the moratorium rules cease to apply."