

1) GENERAL LEGAL FRAMEWORK

What is the basic legal framework of the measures adopted in your jurisdiction? Are they implemented on the grounds of constitutional or "standard" law? To what extent are the rights and freedoms provided by the constitution suspended? Is the government allowed a greater flexibility when issuing new laws or other measures, especially when limiting the constitutionally provided rights?

Since the first case of Covid-19 in Portugal in the 2nd of March 2020 public health authorities have taken some measures to fight the Covid-19 pandemic crisis under standard public health law. This is a law granting to sanitary authorities some reinforced administrative powers such as to isolate some locations where outbreaks of contagious diseases may occur. Public health authorities have the right to adopt some other measures but cannot, in the view of most constitutional law experts limit fundamental rights, freedoms and guarantees or suspend the same. Hence, at a first stage, Portuguese Government adopted some measures addressed to the population like a sanitary cordon to a city (Ovar) that had a serious outbreak of Covid-19, ordered schools and universities to shut down and recommended that population stayed home and work as much as possible from home. These measures have been adopted on a voluntarily basis by Portuguese people.

In face of an exponential growth of Covid-19 pandemic crisis, a state of emergency was declared by the President of the Portuguese Republic with authorization of the Parliament and was in force for 45 days. Declaration of a state of emergency is foreseen in Portuguese Constitution but was never declared before in the history of Portuguese 45 years-long constitutional democracy. State of emergency allowed Portuguese Government to adopt more drastic measures to protect public health such as the obligation (and no longer the recommendation) for confinement of citizens to their homes with exception of persons working in essential provisions of goods and services and the lockdown of most social and economic activities and other limitations to constitutional rights, guarantees and liberties. Based on the declaration of the state of emergency, the Government had more flexibility to enact severe public health protection measures as well as measures to support the social and economic effects of such public health measures. However, several matters remained of the exclusive competence of the Parliament which never closed, and several laws were also enacted by the Parliament under proposal of the Government with the contribution also of other political parties. Several Decree-Laws enacted as a matter of urgency by the Government were also ratified and confirmed by the Parliament and in several issues complemented or altered by the Parliament.

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It should be noted that most measures were taken under standard laws and by means of resolutions of the Council of Ministers. Execution of such measures was entrusted to the respective Ministers and governmental bodies. All political parties represented in the Parliament and social and economic stakeholders have been heard before such measures were taken and kept informed.

Among the measures that most limited or suspended constitutional rights we would note the compulsory confinement of citizens in the respective homes, prohibition of demonstrations or gatherings of more than 5 persons, prohibition of strikes, fixation of prices of certain goods or services, restrictions to the circulation within Portuguese territory, compulsory quarantine and compulsory lockdown of social and economic activities.

As of the 4th of May 2020, the last prorogation of the declaration of state of emergency has expired and has not been renewed. Portuguese Government has declared a state of calamity under public health law. This declaration allows the Government to adopt some public health protection measures but not also to limit some fundamental rights, guarantees and liberties. However, Portuguese Government may still impose compulsory quarantines, adopt a progressive and gradual end to the lockdown of social and economic activities which started as from the 4th of May 2020 and is due to continue, to establish sanitary cordons and to recommend and adopt other public health protection measures such as the obligation to use sanitary masks in public transportations. The Government may also adopt other measures as limiting the capacity of clients in restaurants and keeping some other businesses closes as it is the case of bars and night clubs.

2) LOCKDOWN

In Portugal lockdown has been mandatory mostly for places where too many people could otherwise gather. This has included practically all commercial establishments, shopping malls or centres, offices, restaurants, bars, beer houses, wine houses, coffee shops, night clubs, cinemas, theatres, music halls, museums, monuments, libraries, gyms and swimming pools. Also, public administration offices and courts have been closed. Public concerts, shows and festivities have been cancelled or postponed. Churches, synagogues, mosques and other temples have been closed. All non-essential personal services such as barbers, hairdressers, massages, SPAs, manicures, pedicures, gardening, cleaning and a very long list of other services have been shut down.

Dental services could only be provided in case of emergencies. Accountants and lawyers could only provide services at distance via email, phone or internet with a very limited presence in their offices. All services that could be rendered at distance were urged to do so.

Factories were not required to shut down. However, most of factories being left without customers or just a few and in many cases without supplies opted for closing. For example, automobile industry has only resumed its activities on the 11th of May 2020 in a gradual manner. Factories are only allowed to work provided they are able to respect social distance between workers and have organized themselves to return to production by shifts to prevent all workers to be infected and or suspected of being infected and placed in quarantine.

3) EMPLOYMENT

a) How does the situation concern employers in your jurisdiction? Are employers already taking measures to reduce employment costs, for example by cutting jobs?

There are no solid statistics yet as to the effects of this Covid-19 pandemic crisis on employment. However, based on the few available data unemployment is rising. Many workers employed on a temporary basis or under fixed term contracts and workers during the experimental period where employers are entitled to dismiss employees have already been dismissed. Several workers employed as independent or liberal professionals but working for a sole company have seen their service contracts terminated.

b) What are the measures adopted by the government to protect the employees and maintain the employment - e.g. wage subsidy covering a percentage of the costs of keeping employees? Is the employer obliged to cover the full salary even if he is unable to order work to the employee?

The main measure adopted by Portuguese Government to maintain jobs was the creation of a simplified law-off procedure. Under this procedure, companies could temporarily suspend for one month, renewable, labour contracts. Workers receive 2/3 of their wages in an amount between € 635 and a maximum amount of € 1,905.

Employers are entitled to receive from the Social Security a subsidy equivalent to 70% of the compensation paid to the workers.

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So far, it is estimated that around 1 million workers have been placed in lay-off under this simplified regime available for a maximum period of 3 months with the above financial subsidy to the employers.

Employers with activities ordered to shut down benefiting from this simplified lay-off regime have 8 days to restart their activities at least in part once lockdown has been terminated.

Are there any limitations on terminating employment in the current situation?

Employers benefiting from simplified lay-off regime must keep their job posts. Otherwise, termination of labour contracts follows the general regime foreseen under the Portuguese Labour Code.

4) CONTRACTS AND AGREEMENTS

Does the government interfere with private contracts and agreements? Ban on notice to quit apartments/retails premises because the tenant fails to pay the rent, instalment moratoriums for debtors (mortgage, consumer credits) etc.

During the entire period declared as of duration of Covid-19 pandemic crisis Portuguese Parliament has approved a law suspending any procedures leading to the ban on notice for quit apartments or houses used as main residences as well as commercial establishments used by tenants failing to pay the rents.

Portuguese Housing Institute provides zero-interest loans for such tenants to pay the rents. In the case of housing leases, tenants are entitled to a loan equivalent to the difference between the value of the rent and an effort rate of 35% of the family income provided they can demonstrate that after payment of the rent they still have a remainder income of at least € 438,81.

Landlords who can demonstrate that their rental income has decreased at least 20% as a result of lack of payment of rents are also eligible for such zero-interest loans provided by the Portuguese Housing Institute.

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A moratorium on mortgage loans up to 6 months expiring on 30 September 2020 has been approved by the Portuguese Government by means of a protocol with Portuguese commercial banks. Most of commercial banks have decided to apply a similar moratorium to consumer credits and financial companies have also applied the same although not covered by the same protocol.

For the entire period of duration of Covid-19 pandemic crisis no suspension or interruption of supply of water, energy and telecommunications services can be made by suppliers even on the grounds of lack of payment of services.

5) GOVERNMENTAL FINANCIAL SUPPORT

Loans and credits granted by the government or governmental subvention for enterprises – especially towards small businesses or sole traders.

Portuguese Government has launched a credit line of € 4,500 million guaranteed by the State in 90% for micro and small and medium companies and in 80% for large companies to support companies affected by the economic situation created by Covid-19 pandemic crisis. In addition, the following specific credit lines have been created:

- (a) € 400 million for capitalization and short-term cash-flow of companies;
- (b) € 200 million for leisure activities;
- (c) € 900 million for restaurants;
- (d) € 600 million for tourism and local lodging (Airbnb).

Companies can only benefit from the above credit lines provided that:

- (a) Maintain the jobs they had as of February 2020;
- (b) Have no tax or social security debts;
- (c) Have a positive net equity situation;
- (d) Have no bank debts.

Credit lines cannot be used to repay previous loans.

Loans granted under the above credit lines are for a maturity of 4 years with a grace period of 12 months. Indicative maximum spread is of 1% to 1.5%.

These loans are to be granted preferentially to micro, small and medium size companies but large companies can also apply.

6) TAXES

Has your country implement special tax regulation to ease the financial situation of private persons – such as postponement of tax deposit payments or tax credits.

Payment of corporate income tax ("IRC") by filing the respective annual tax return has been postponed to 31 July 2020.

Tax deposit payments on the account of corporate income tax ("IRC") due by micro and small size companies and personal income tax ("IRS") due by self-employed or liberal professionals or sole traders have been postponed from 31 March to 30 June and from 31 July to 31 August.

Payments of IRC and IRS withheld at source to be delivered to the tax authorities during the months of March, May and April may be paid by instalments without interest during the months of May, June and July. This applies to micro and small companies, self-employed or liberal professionals, sole traders and to other companies ordered to shutdown their activities.

Payment of 2/3 of social security contributions due in the months of March, April and May can be paid in 3 or 6 instalments until December 2020. This applies mostly to micro, small and medium-size companies but large companies ordered to shutdown their activities, which have lost their supply chains and or which have seen their turnover substantially decreased could also benefit from this measure.

Deadline for any tax procedures and procedures for the seize of assets for coercive payment of tax debts are suspended.

7) INSOLVENCY AND ENFORCEMENT PROCEEDINGS

(moratorium – suspension of current and/or pending proceedings)

There is no specific rule suspending insolvency or enforcement proceedings. However, since the declaration of the state of emergency and despite the same has expired an extended judicial vacations period has been approved by the Portuguese Parliament and courts have been closed except for urgent cases among which insolvency and enforcement proceedings are not included. Despite some plans to reopen courts, as of the beginning of the second week of this new stage of state of calamity (11th of May 2020) Parliament has not yet decided to reopen the courts. Once the courts are reopened insolvency and enforcement proceedings will restart or may be filed.