

Covid-19: legal impact on companies and organizations

INTRODUCTION

COVID-19's impact on companies and organizations. Difficult, but necessary decisions.

CCA drafted a full guide to help companies and organizations to navigate through these uncertain times. The decrease of revenues and the inability to collect receivables implies the need of companies and organizations to make difficult but necessary decisions.

Throughout this document, you will find simple and practical suggestions and solutions.

This guide is divided by practices areas and includes not only the general applicable legal mechanisms but also the new measures that have been announced by the Portuguese government to mitigate the economic impact of the virus.

We believe we have gathered the information needed to take an informed and effective decision, as we try to give a small contribution to all the companies and organizations that are struggling in these difficult times.

Naturally, some aspects will necessarily require a deep dive on more concrete subject and therefore CCA created a special task force that is holding several webinar sessions to answer everyone's questions. The webinars are organized by CCA ON (please click [here](#) to find out more).

Finally, we wanted to offer a word of hope and encouragement to our clients, managers, entrepreneurs and employers, and remind you that you can always count on us and on our resilience, as we believe we are up to the challenge.

EMPLOYMENT AND SOCIAL SECURITY

The spread of the Covid-19 in Portugal has had a significant impact on employment.

It is essential that both employer and employees act reasonably and there is a comprehensive dialogue between those parties to ensure that the company will continue to operate and, ultimately, be able to maintain its employees.

In case a company closes down, either fully or partially, due to a shutdown order by the authorities, or faces a drop of more than 40% of the revenue, or needs to suspend, fully or partially, its activities due to the Covid-19, then it can opt for a simplified lay off. In the simplified lay off, the employees have 2/3 of their salaries covered, 30% by the company and 70% by Social Security. In addition, during lay-off, companies are exempted to pay the employer's share of social security taxes.

The "simplified lay off" or the extraordinary support for the maintenance of the employment contracts during a financial crisis – now named "Financial Support"

Who may request?

Any private employer that must temporarily reduce the normal working periods or to suspend employment contracts due to:

- Full or partial closure of the company or its facilities after a shutdown order by the government;
- Full or partial interruption of the activity resulting from the disruption of the global supply chains, or from the suspension or cancelation of orders and a drop-in revenue of at least 40%.

How to show the revenue's decline?

- Employer's declaration, income statement and certificate from the company's certified accountant.

Please note that, in case a company or an establishment fully or partially closes in compliance with a shutdown order by the government it is not necessary to file an employer's declaration nor the certificate issued by the company's certified account. As a precautionary measure, we believe that companies should file those documents nonetheless.

Eligibility Requirements

- No past due debts owed to the tax authority nor to social security; until 30.04.2020, the debts due from March 2020 are not considered;
- VAT declaration covering the month of the request and the two prior months or VAT declaration covering the last quarter of 2019 or the first quarter of 2020;
- Documents proving the cancellation of orders or reservations, evidencing that the company's or unit's operating activity or bookings will be reduced by at least 40% in the month following the request;
- Other evidence to be required by the government.

Procedure

- The employer sends out a communication in writing to the employees announcing the decision to request the support and the envisaged duration;

- In case there is a union delegate or an workers committee, these entities must be heard;
- The employers shall file the following documents with the Social Security:
 - Request to Social Security;
 - Employer's declaration, containing a summary of the economic difficulties;
 - Certificate issued by the company's certified accountant;
 - List with the names of the employees covered by the request;
 - Social security numbers (of the company and the employees)

The request shall be filed through Direct Social Security ("Segurança Social Direta") website.

Amount of the Financial Support

- 2/3 of the gross salary of each employee up to the maximum amount of 3x the minimum wage (€ 1.905). Social Security will pay that amount directly to the employers. Directors and managers are excluded from this scheme.

Payments of the Financial Support

- 70% is paid by the Social Security
- 30% is paid by the employer.

Duration

- This scheme will last for a month;
- Exceptionally it can be extended monthly up to 3 months.

The employers that have benefited from the Financial Support, also have the right to an extraordinary financial incentive to help to resume its activity:

- The Extraordinary financial incentive will be granted by IEFP, I.P. in one instalment;
- The amount is one minimum wage (€ 635) per employee.

Temporary exception to pay contributions to the Social Security- TSU

- During the application of these extraordinary measures, the following entities are exempted from paying employer's contributions to Social Security:
 - The employers which benefited from the Financial Support, regarding the employees and members of the corporate bodies; covered by the simplified layoff;
 - The independent workers that are eligible for the Financial Support and their respective spousal, even though it does not exempt them from filing their quarterly declaration;
- These exemptions only apply during the months the company is benefiting from these measures.

Duty to retain workforce

During the application of these measures as well as in the following 60 days, the employers cannot terminate any employment contract, if the employee was covered by the extraordinary measures, either by collective redundancy or termination due to the extinction of the job position.

Telecommuting

During the application of the extraordinary measures, it is no longer necessary to enter into an agreement for telecommuting, as it may be decided unilaterally by the employer or requested by the employee, assuming that is compatible with the employee's duties.

If not possible to telecommute, considering the declaration of the state of emergency, companies shall issue authorizations to allow their employees to freely circulate to and from the place of work without any constraints.

Independent Workers

1. Quarantine subsidy

The quarantine is treated in the same terms as disease by the Social Security. The amount of the subsidy is 100% of the compensation. Waiting period (10 days) does not apply.

2. Extraordinary support to the family and to support reduction of business

For independent workers who have paid contributions to the social security for 3 consecutive months in the last 12 months and can't resume its activity, there are two supports available:

- Support to the family in the amount of 1/3 of the monthly compensation for the 2020 quarter, up to the amount of 2,5 "IAS" (€ 1.097,02) and a minimum of 1 IAS (€ 438,81);
- Extraordinary support for the reduction of business, which lasts for a month and it is renewable up to six months; the support is capped at 1 IAS (€ 438,81) and will be paid from the month following the request;
- The supports are not cumulative and contributions to the social security are still due but

the independent workers may defer its payment.

- The support shall be included in the income quarterly declaration and is subject to contributions to the social security; it is granted automatically upon request by the independent worker (assuming telecommuting is not possible).

CONTRACTS

Several specific legal mechanisms to protect special types of agreements, such as financing or lease agreements, were enacted as part of the pack of measures approved to face the consequences of Covid-19. For the remainder contracts, the general legal rules shall apply.

It should be noted that those are general rules meaning that each contract shall be analysed on a case by case basis and be interpreted under the applicable law and the relevant clauses.

Financing Agreements – exceptional measures to protect credits already granted

Who is eligible?

The companies, including sole proprietorships, that comply with the following requirements:

- Have their registered offices and business in Portugal;
- As of March 18th, 2020, are not defaulting for over 90 days any payment obligations towards a financial institution or, in case its defaulting, it doesn't reach the amount to be considered "material" according the criteria set by Bank of Portugal and the European Central Bank;
- Are not insolvent and have not suspended nor transferred its credits and as of March 18th, 2020, and any defaulted obligations have not been executed;

- Have no past due debts owed to the fiscal authority nor to social security; until April 30th, doesn't include debts due from the month of March.

Financing operations covered:

All credit facilities granted by credit institutions, and similar, except:

- Credit or loans (i) used to purchase securities or other financial instruments; (ii) granted to beneficiaries under special regimes, benefits or subsidies to register their offices or residences; and
(iii) granted to companies in the form of credit card.

What are the measures?

- Financial institutions cannot terminate the revolving facilities nor the loans granted until March 28th, 2020 while these measures are applicable;
- Deferral of the ongoing financings as of March 28th, 2020, with principal payment in the end of the contract, for a period at least equal of the measure;
- Suspension, between March 28th and September 30th of 2020, of the payment of principal, rents and interest with cut off time until September 30th, 2020 for the loans that allow for a principal partial repayment or other cash payments in instalments. The payment dates for the principal, rents, interest, commissions and other expenses are automatically delayed for a period equal to the suspension.

Please note that the beneficiaries may request at all times that only the principal repayment, or part of it, is suspended or deferred, and keep paying the remaining amounts.

Are there any risks for the beneficiaries? No. The financial institutions cannot claim breach of contract, activate anticipatory cut off clauses nor claim that collaterals are not valid or have been terminated.

The deferral of the payment dates does not lead to the suspension of the interest cut off date during the period of these measures, as the interest will be compounded to the amount of the loan. Margin calls or stop losses are also deferred or suspended.

How to file a request for deferral or suspension?

Send a letter or email to the bank stating the intention to apply for these measures, together with a certification showing the inexistence of past due debts owed to the tax authority and to social security.

What are the financial institution's rights in case of bankruptcy?

Financial institutions may act according to and seek all legal remedies provided by law, namely terminate the contracts and claim the credits in the bankruptcy procedure.

Are there any sanctions for the unduly application to the measures?

People and entities who made false statements regarding the declaration or the requirements, are liable for all the losses they cause, as well as all the expenses connected with the application of the measure.

We believe that, in case of a company, the legal representatives that file the documentation are personally liable for the false statements.

Lease Agreements

If the establishments were affected by the restrictive measures taken by the government, the lease agreements may be governed by special rules that were approved by the government. If not, then the general rules of law shall apply.

In case of commercial establishments or service providers whose activity has been suspended or restricted by the state of emergency, the following protective rules may apply:

- The closing of those establishments and the non-payment of rents during the state of emergency cannot be invoked as a reason for the termination of the non-residential lease nor for eviction;
- The tenants may defer the payment of rents due during the state of emergency and in the month immediately after and only pay within 12 (twelve months) after the end of that period in instalments on a monthly base, never lower than 1/12 of the total amount in debt, to be paid with the regular rent of the relevant month;
- No penalty, default interest or indemnity for deferring the payment according to the conditions mentioned above may be imposed.

These are specific measures to protect the tenants during the state of emergency, however the parties may always reach other agreements.

The commercial establishments that were not covered by the restrictive measures of the state of emergency but have nonetheless closed, will need to invoke the general rules of law (mentioned below), to claim for rent suspension or reduction.

Anyhow, the landlord may only terminate the contract if the tenant doesn't pay the rent or expenses for two or more months.

In relation to lease agreements or real estate issues, are also suspended (i) all types of eviction procedures when it may cause the tenant to lose his/her residential home; (ii) the production of effects of any termination or nonrenewal notices of lease agreements, residential or not, made by the landlord, unless in case of acceptance from the tenant and (iii) mortgage's execution over the property which is the home of the executed.

Contracts: General rules of law

Renegotiation

This implies an agreement between both parties, but it has the advantage of avoiding the need to resource to the court. This should be the main mechanism to be used by the parties.

Impossibility of fulfilling

Absolute Impossibility

For the agreements where performance of an obligation is impossible with no fault of the party, the obligation is extinguished.

Partial Impossibility

If only part of the performance of an obligation is truly impossible, the party shall perform the part that is possible and the price shall be proportionally reduced. However, in case the counterparty shows no interest in only having a partial performance, it may terminate the contract.

Temporary Impossibility

When the performance of an obligation is temporarily impossible, with no fault of the party, the performance of the duties may be deferred without any penalties. However, it is necessary that the counterparty is still interested in maintaining the agreement.

Grounds to claim impossibility

It is commonly deemed that there is no fault of the party for the non-fulfilment of its obligations, in case of (i) a force majeure, (ii) unforeseen events, (iii) impossibility caused by the counterparty or a third party or (iv) frustration provided by law.

Force majeure applies to cases when performance of the obligations by the parties is impossible, so the duties will be legally extinguished without creating any duty to pay damages for the non-performance, notwithstanding the obligations to return the goods or payments already received under the agreement.

The following events are considered force majeure events:

- Natural and human events whose consequences and effects were unpredictable or impossible to foresee;
- The events, even if predictable, were not fault of either of the parties and make the performance of the duties impossible, e.g.: wars and natural disasters;
- Pandemics, like Covid-19, have been considered force majeure cases by the Portuguese courts.

Therefore, the companies who have had the performance of their obligations made impossible as a direct and necessary consequence of Covid-19, must inform the counterparty and explain why it is impossible to perform their obligations under the agreement.

Please note that it is very important to seek for legal advice before sending the communication to the other party as it might be considered as a recognition of the breach of contract if the court afterwards does not consider there was a force majeure event.

Modification or termination of the agreement for change of circumstances

Applies to those cases in which the underlying main reasons for the parties to enter into a given agreement have significantly changed and such change could not be considered as a regular risk of the agreement. On such cases, one party may request the amendment or the termination of the agreement. In these circumstances, the performance of the obligation is not impossible, but it would cause a substantial and unreasonable economic hardship for one of the parties.

To claim the amendment or the termination of the contract, it is necessary to make evidence of the following:

- A significantly and unpredictable change of the main circumstances under which the parties decided to enter into the agreement that affects both parties;
- If the agreement is not amended further to the change in circumstances it will lead to a loss to one of the parties which goes against the principles of good faith;
- The change was not covered by the normal risks of the business;

- There is a direct connection between the event that caused the change of circumstances and the effects to the business of the party.

The amendment of the contract may result in:

- Deferral of the date to perform the obligations;
- Modification of the price/rent/retribution;
- Amendment or reduction of the services to be provided;
- Temporary suspension of the agreement and of the penalty clause.

It is not enough to evidence the impact of Covid-19 in the economy and in the activity of the company to prove it is an extraordinary and unpredictable event, not covered by the regular risks of the business. It is necessary to show that the impossibility to fulfil an obligation is directly and unquestionable caused by the impact of Covid-19 in the business, jeopardizing the fulfilment of the obligations prior agreed, the balance of the agreement and the contractual good faith.

CREDIT FACILITIES

1. Credit Line “Capitalizar 2018 – Covid-19”

How does this line works?

The Credit Line “Capitalizar 2018- Covid-19”, in a total amount of € 400M (four hundred million euros) is already available and is allocated as follows:

Working Capital: € 320M (three hundred and twenty million euros), to fund companies' needs of working capital;

Cash Flow Plafond: € 80M (eighty million euros), to fund cash flows needs.

Which operations are excluded from this credit line?

- Financial restructuring or consolidation of due debts; Operations aimed to pay or replace, directly or indirectly, previously financings agreed with banks and purchase of real estate and cars.

Who is eligible?

- Micro, small and medium size companies certified by an Electronic Declaration issued by IAPMEI and big companies (big companies don't need IAPMEI's certification) or Big companies that have at least a credit rating of B-;
- Must have registered office in Portugal;
- Their business must be one of the listed in the Annex III of the official publication document of these line of credits;
- No past due debts owed to FINOVA;
- Are not in default with any bank as of the date of the signing of the loan agreement;
- Have no due debts owed to the tax authority nor to social security as of the date of the signing of the loan agreement;
- Companies must have had a net positive balance in the last balance sheet; companies with net losses may only apply if they can have, and show, a net positive balance sheet as of the signing of the loan agreement.

What's the maximum amount of the loans?

Each company may be granted up to € 3M (three million euros), € 1.5 (one and a half million euros) for each line (working capital and cash flow).

The working capital line may have a maturity up to 4 years and has a grace period of twelve months. The cash flow line may have a maturity up to 1, 2 or 3 years and doesn't have a grace period.

What's the interest rate?

The interest will be agreed between the bank and the company up to the limit of a fixed or adjustable rate, underlying to a 1, 3, 6, or 12 months Euribor, and an adjustable spread between 1.928% and 3,278% depending on the maturity of the loan and the size of the company.

Mutual Guarantee

These loans are guaranteed by "Sociedades de Garantia Mútua" up to 80% and the commission guarantee will be reduced, to the maximum of 0.5%. The guarantees are sub guaranteed by 100% by the "Fundo Comum de Garantia Mútua".

What are the documents needed for the application?

The Bank will require documents that can show the eligibility conditions mentioned above, namely:

- The SME certificate;
- The Company's commercial registry certificate;
- The last balance sheet showing a net positive situation or the interim balance sheet showing net positive situation for the companies whose last balance sheet showed net losses.

2. Credit Line for micro companies in the tourism business

This credit line is in the global amount of € 60M (sixty million euros) and is available for micro tourism companies to cover their working capital and cash flow needs. The amounts are made available by Turismo de Portugal as follows: up to € 750 (seven hundred and fifty euros) per month per employee and for a three-months term up to the global amount of € 20,000 (twenty thousand euros) per company.

The loans have a 3-years maturity date, bear no interest and have a grace period of twelve months. The reimbursement is made in quarterly instalments of an equal amount and the shareholder(s) shall personally guarantee the loan.

Who is eligible?

- A micro company with less than 10 employees and with a balance sheet lower than € 2M (two million Euros);
- Has an electronic certificate issued by IAPMEI;
- Carries out tourism activity in Portugal.

To apply a company needs to file the application form available in Turismo de Portugal's [website](#).

The following documents shall be uploaded:

- Employees' compensation declaration filed with social security;
- A proxy authorizing Turismo de Portugal to consult electronically the tax and social security situation of the company;
- The code of access to the permanent certification issued by the commercial registry.

The Credit Line to Support the Economy COVID-19 in the amount of € 3,000,000,000.00 (three billion euros) has been already approved by the Government but is still pending publication in the Official Gazette. According to the information already made available the following four Specific Credit Lines will be available:

- Specific Line Covid-19 for restaurants and similar business: € 600M (six hundred million euros);
- Specific Line Covid-19 for travel agencies, touristic animation companies, and organization of events business and similar: € 200M (two hundred million euros);
- Specific Line Covid-19 for tourism companies, including tourist accommodations, tourist projects and similar)- € 900M (nine hundred million euros);
- Specific Line Covid-19 for industry companies: € 1.300M (one billion and three hundred million euros)

The loans may have a maturity of up to 4 years and a grace period of 1 year for the payment of the principal and interest. These loans will be made by banks.

BUSINESS ORGANIZATIONS

Fiduciary duties

The directors and officers of the companies are responsible to implement and supervise risk management policies.

The directors and managers shall:

- Ensure the protection of all its stakeholders, by implementing security measures and follow the contingency plans issued by the public authorities;
- Consider the postponement of all meetings to be held in person; if those meetings cannot be postponed, the directors shall warn the risks to all participants and shall adopt protective measures. If the law and the bylaws allow, companies shall consider alternatives to in person meetings such as written resolutions, electronic votes or holding virtual assemblies.

Please note that the deadline to hold the annual general assembly, which was March 31th, was deferred to June 30th;

- Evaluate the impact of Covid-19 in the company's contracts and discuss whether it is possible to terminate, modify, defer, or use any of the legal mechanisms available;
- Inform the counterparties in case it is impossible to timely perform their contractual duties.

TAX

Tax Obligations

The Government enacted several tax measures to mitigate the shutdown of the economy and lack of liquidity.

Deferral of the following tax obligations:

- Special Payment on behalf of Corporate Income Tax "Pagamento especial por conta": (March 31st) until June 30th, 2020;

- Form Model 22 (May 31st): until July 31st, 2020;
- First Payment on behalf of Corporate Income Tax and Additional Payment on behalf of State Surtax “Primeiro Pagamento por Conta e Primeiro Pagamento Adicional por Conta” (July 31st)
Until August 31st.

Payment flexibility

Option to pay: (i) payment within the usual deadlines, (ii) payment in three monthly instalments; (iii) payment in six monthly instalments, in both (ii) and (iii) without the need to provide collateral or interest.

The option to pay in instalments is applicable to VAT and personal and corporate income taxes withheld and are to be delivered to the Portuguese tax authorities in the second quarter of 2020.

Eligible entities include self-employed natural persons and companies that (i) have had a turnover up to € 10M (ten million euros) in 2018; or (ii) have initiated their activity in 2019, or (iii) have reopened the activity in 2019 provided that with no turnover in 2018 or (iv) its business activity is included in one of the shutdown sectors. The request for payment in instalments is made electronically and granted automatically.

Companies that do not fill the above criteria may apply for said measures if they can prove an invoicing reduction of 20% in the three months preceding months by reference to the same period of 2019.

In case the data reported in the Portuguese tax authority website does not evidence all the VAT transactions, the reduction of invoicing may be evidenced by resorting to turnover, provided that duly

certified by a certified chartered accountant or statutory auditor. The application for payment in instalments is submitted electronically but in these cases subject to authorization.

Justified impediment

Failure to comply with tax obligations by both taxpayers and certified chartered accountants that are infected or in quarantine declared by the health authority is considered a justified impediment. This concept may be of particular relevance as it may justify the delay in the compliance of tax related obligations.

CONTRIBUTIONS

Several measures were adopted regarding the payment of social security contributions due by employers, employees and independent workers.

Deferral of the payment

Employers: social security contributions due by employers by reference to March, April and May can be paid in instalments, with no need to submit a request or payment of interest, as follows:

- 1/3 in the due date;
- 2/3 in equal instalments in July, August and September or from July to December. The application for each of these payment schedules must be filed with social security in July.

Eligible employers include:

- Those with less than 50 employees;

- Those who have More than 50 and less than 249 employees, that can prove a reduction in invoicing of at least 20%, as evidence in the Portuguese tax authority website, in March, April and May 2020 by reference to the same period of 2019, or, if dealing with companies incorporated for less than 12 months, by reference to the average since its incorporation; or
- Those with 250 or more employees, as long it is a (a) solidarity institution or assimilated entity; or (b) their business activity is included in one of the shutdown sectors, in the tourism or aviation sectors, by reference to the establishment or company shutdown; or (c) their business has been suspended by law or by the government; and in all cases provided that the proof is made as to a minimum 20% invoicing reduction, as evidence in the Portuguese tax authority website, in March, April and May 2020 by reference to the same period of 2019, or, if dealing with companies incorporated for less than 12 months, by reference to the average since its incorporation. In case the data reported in the Portuguese tax authority website does not evidence all the VAT transactions, the reduction of invoicing may be evidenced by resorting to turnover, provided that duly certified by a certified chartered accountant or statutory auditor.

The number of employees is assessed by reference to the social security contribution's statement relating to February 2020.

If the deferral depends on the turnover, employers shall have to submit the relevant evidence during the month of July, by means of a certificate issued a certified chartered accountant or statutory auditor.

Self-employed: they are eligible regarding the months of April, May and June of 2020 on the same terms as above.

DATA PROTECTION AND CYBERSECURITY

Companies may implement a special plan for the management of personal data of employees, suppliers and clients during Covid-19

In order to execute a plan to manage the crisis caused by the spread of Covid-19, companies may need to collect health data from their employees, as well as from clients and suppliers who go to their facilities or have had or will have direct contacts with anyone from the organization. Health data is considered special data and is subject to specific rules and strict limitations. The express consent may not be enough for processing the employees' data. Therefore, the employers shall only collect and process health data in the following circumstances:

- If there is public interest in the processing of the data;
- To evaluate the working capacity of the employees;
- To comply with duties or rights of the company or its employees according to the law.

In addition to health data, companies may also need to collect private data from their employees such as concerning travels to risky countries.

The companies may therefore collect data based on the following:

- Internal warnings regarding suspects or identified cases of infections with Covid-19: a company may need to inform that one of its employees is suspected of being or is infected with Covid-19. This notice shall be made, if possible, without identifying the person. Such person may only be identified if that information is essential to ensure the health and safety of the other employees and there is no viable alternative.

Companies may also collect health data of clients and suppliers who go to the company's facilities, by complying with the following rules:

- Only the essential data to the implementation of the management contingency plan shall be collected;
- The data shall be protected and shall only be used for that purpose and shall be destroyed as soon as that purpose is achieved;
- In the moment of the data collections, it shall be made available a "privacy policy" that contains, in a simple and clear way, the purposes for the collection and the identity of the collector and other legal requirements.

Cybersecurity

The implementation of a contingency plan to face Covid19 may increase the number of employees telecommuting and working from home, who may use personal equipment for that. Therefore, measures shall be taken to protect information, and companies shall consider the following:

The importance of reminding employees of the company's internal policies, namely the ones that impact telecommuting such as "privacy policies", "information security policies" and "bring your own devices policies". In case you don't have any policies, you should adopt them as soon as possible.

Need to strengthen the structure that supports the remote access. Certify that your VPN has capacity to support the whole office accessing at the same time.

Updates. Guarantee that the VPN and the firewalls are updated with their latest versions.

Security in personal devices. Make sure that the employees who must use personal devices to work from home have security mechanisms that offer the same security as the ones uploaded in the office devices.

INSURANCE

Operation losses insurances

Several companies were forced to close after the shutdown order issued by the government.

The typical multi-risk insurances subscribed that have an “operation losses” provision generally do not cover events like these as it is necessary a material loss that can be indemnified under the multi-risk insurance and that loss shall be caused by a risk covered by the insurance policy.

Despite the losses that may occur due to the shutdown, the Covid-19 does not cause a material injury in the insured object meaning that, generally, this will not be an event covered by the operations losses insurance.

Travels

In regard to travel insurance, there is not a template insurance, hence the analysis needs to be done on a case by case basis. In any case, as a rule of thumb, no insurance covers the cancel of travels for fear of being infected.

Health

The official declaration of a pandemic has no impact in the normal functioning of health insurances and the payment of the amounts due under such policies.

Notwithstanding the above, most of the health insurance contracts do not cover expenses related to pandemics officially declared, as it is the case of Covid-19. On this matter, the major insurance companies in Portugal have informed that they are covering the cost of the Covid-19 diagnostic tests that have been ordered by a doctor.

If the Covid-19 infection is diagnosed, (i) most of the health insurances contracts do not cover the expenses related thereto, as it is an officially declared pandemic; (ii) the case shall be forwarded to the special services of the National Health Service.

Life Insurance

Most of the life insurance contracts do not include an exclusion or limitation in case of pandemics.

Work accidents

The accidents that happen during telecommuting are considered work accidents. The companies shall keep a file identifying all employees working from home, their work period and the addresses where they are working.

RERE”, “PER” AND “INSOLVENCY”

In case the measures and supports approved to face the impact of COVID_19 in the economy are not sufficient to allow the companies to face their difficult financial conditions, a company might need to file for bankruptcy and restructuring.

“Regime Extrajudicial de Recuperação de Empresas (RERE)” - Extrajudicial Program for Companies Recovery

What is it?

It is an out of court procedure that allows the negotiation between the debtor and all its creditors of a restructuring of the debts of the company.

Who is eligible?

All companies, that are suffering economic hardship or in imminent insolvency.

Who can file?

The company together with creditors holding at least 15% of its liabilities, shall sign a negotiation protocol and file it with the Commercial Registry.

Only the creditors who signed may participate?

No, any creditor may join the process by signing a deed of adherence.

After filing the negotiations protocol, is the company limited?

Yes. The company shall maintain its normal course of business but there are some acts that cannot be performed.

What are the effects of the protocol?

- Suspension of any interruption of essential utilities services;
- Suspension of any insolvency procedure required by any creditor that joined the protocol.

How to terminate?

It may terminate with a restructuring agreement, or if it is not possible to reach an agreement, it terminates automatically.

Restructuring agreement

Unless otherwise agreed, the restructuring agreements suspends all legal procedures filed against the company in respect to the debts covered by the agreement.

“Processo Especial de Revitalização (PER)”: Special Procedure of Recovery: Bankruptcy

What is it?

It is a judicial procedure that allows a company facing an economic hardship or in imminent insolvency to be recovered by negotiating with its creditors a restructuring.

Who is eligible?

Any company that shows the necessary conditions for restructuring and that files a written declaration by the certified accountant that the company is not insolvent.

How to start?

By filing a petition before the court claiming its intention and the intention of creditors holding at least 10% of the company's debt, to negotiate a possible restructuring and approve a recovery plan.

What are the effects?

By electing a temporary bankruptcy manager:

- No new court procedures may be filed to claim debts;
- All judicial procedures are suspended while the negotiations are ongoing;
- All insolvency procedures are also suspended;
- Utility services cannot be suspended.

During the judicial procedure, is the company limited?

Yes. The company's actions will be limited as there are some acts that cannot be performed.

What are the effects of the recovery plan's approval?

- The plan affects all creditors, even though they had no intervention;
- All judicial procedures against the company are extinguished;

- All insolvency procedures against the company are extinguished.

Insolvency Procedure (Liquidation)

What is it?

It is a judicial procedure to liquidate all the assets of the company in order to pay all the company's debts, which may be done through an insolvency plan to recover the company.

When is a company insolvent?

When it cannot pay its due debts or its assets are considerably lower than its liabilities.

Is there any obligation to file for insolvency?

Yes. The directors or managers of the company shall file for insolvency until 30 days after acknowledging the company is insolvent. The law assumes that knowledge exists if a company does not pay its taxes, social security payment, rents or employees' compensations for 3 months.

Who shall file for insolvency?

The directors or the managers.

Can the creditors start an insolvency procedure?

Yes, any creditor.

What is needed to start the procedure?

It is necessary to file a petition before the court describing the insolvency, identifying the directors or the managers and the five biggest creditors.

What are the effects of being declared insolvent?

- The company is precluded from managing or disposing its assets, unless it is decided that the director or the managers shall keep managing the company;
- The company will be represented by the insolvency manager for all income related transactions;
- The managers and directors of the company will stop receiving compensation;
- All non-executed pending judicial actions against the company join the insolvency procedure if requested by the insolvency managers;
- All executive judicial actions are suspended and no new execution judicial actions may be filed;
- All liabilities are considered past due;
- All accounting paperwork and assets of the company are apprehended.

How to terminate?

It terminates with the approval of a recovery plan by the creditors or with the liquidation of the assets.

What are the effects of the recovery plan?

The credits suffer the modifications established in the plan.

The company recovers the power to manage itself freely, as long as in compliance with the recovery plan.