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BANKING & FINANCE

MORATORIUM AND OTHER MEASURES

Decree-Law 10-J/2020, published on 26 March 2020 and available at <https://dre.pt/web/guest/home/-/dre/130779509/details/maximized> is reviewed below

This regime is published following recently released statements of the European Banking Authority (EBA) and the European Central Bank (ECB), also referred to below.

Moratorium

The applicable measures are as follows:

- a) Prohibition of cancellation, in whole or in part, of credit lines and loans, in the amounts contracted, from 27 March 2020 until 30 September 2020;
- b) Extension, for a period equal to the term of the measure, of credits with payment of principal at the end of the contract, together with all its associated elements, including interest, guarantees, namely those provided by the way of insurance or securities;
- c) Suspension, for a period equal to the term of the measure, of payments of principal, rents and interest, in relation to credits with partial instalments or other cash amounts payable. The contractual payment plan is automatically extended, so that there are no charges other than the variability of the reference interest rate underlying the contract, and all the elements associated with the contracts, including guarantees, are also extended.

Beneficiaries may request, at any time, that only repayments of principal, or part of it, be suspended.

Neutrality

These measures do not give rise to (i) breach of contract, (ii) trigger of acceleration clauses, (iii) suspension of interest payable during the extension period, which will be capitalised on the value of the loan by reference to the time at which they are due at the rate in force, and (iv) ineffectiveness or termination of guarantees granted in connection with the credit, including insurance, sureties and guarantees.

Beneficiaries

Companies that, cumulatively:

- (a) are headquartered and carry on their economic activity in Portugal;
- (b) are classified as micro-enterprises or SMEs;
- (c) are not, on 18 March 2020, in default or in failure to pay cash benefits for more than 90 days, or are not complying with the materiality criteria laid down in the regulation, and are not in a situation of insolvency or suspension or cessation of payments, or are already in execution by any of the financial institutions covered;
- (d) are having their situation regularised with the Tax and Customs Authority and Social Security Services, not registering debts constituted in March of this year until 30 April 2020.

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Other companies, regardless of their size, that on 26 March 2020 meet the conditions referred to in a), c) and d) above, excluding those that are part of the financial sector.

Natural persons with respect to the mortgages of their dwelling homes and who fulfil the conditions referred to in subparagraphs c) and d) above, are resident in Portugal and are in a situation of prophylactic isolation or illness, or are caring for children or grandchildren, or have been placed in a reduction of the normal working period or in suspension of the employment contract, due to a business crisis, in a situation of unemployment, registered with the Institute for Employment and Professional Training, as well as workers eligible for extraordinary support to reduce the economic activity of self-employed workers, and workers from entities whose establishment or activity has been determined to close during the period of the state of emergency.

Individual entrepreneurs, as well as private charitable institutions, non-profit associations and other social economy entities, except those that meet the requirements set out in article 136 of the Mutualistic Associations Code, that meet the conditions referred to in paragraphs c) and d) above and are domiciled or headquartered in Portugal.

Covered Operations

Credit operations granted by credit institutions, credit finance companies, investment companies, leasing companies, factoring companies and mutual guarantee companies (*sociedades de garantia mútua*), as well as by branches of such credit institutions and financial institutions operating in Portugal.

It excludes (i) credit for the purchase of securities or the acquisition of positions in other financial instruments, whether or not guaranteed by such instruments; (ii) credit granted to beneficiaries of schemes, subsidies or benefits, including tax benefits, to establish head office or place of residence in Portugal, with the exception of citizens covered by the Return Programme; (iii) credit granted to companies for individual use by means of credit cards to members of such corporate bodies, employees or other employees.

Extension

The application of these measures to credits with financial collateral covers the obligations to restore the respective maintenance margins, as well the *stop losses* clauses.

As for loans granted on the basis of total or partial financing or guarantees from third parties based in Portugal, the envisaged measures apply automatically, without the prior authorisation of those entities, and under the initially foreseen conditions.

The extension of guarantees, including insurance, personal guarantees and securities *in rem* and sureties, does not require any other formality, opinion, authorisation or prior act by any other entity, provided for in another legal document, and are fully effective and enforceable against third parties. The respective registration, when necessary, will be promoted by the institutions, without the need to present any other document and without any further process.

Insolvency or revitalisation

In the event of a declaration of insolvency or submission to Special Revitalisation Proceedings or Extrajudicial Company Recovery Scheme of the beneficiary, the institutions may exercise all their rights, in accordance with the applicable legislation.

Accessing the regime

In order to access the measures, the beneficiaries shall, by physical or electronic means, deliver to the lending institution a declaration of adherence to the moratorium, signed by the borrower or his legal representatives.

The declaration shall be accompanied by proof of managing the tax and contribution situation.

The measures shall be implemented within five working days, with effect from the date on which the declaration is submitted, unless the entity does not meet the eligibility conditions. In the latter case, the institutions shall inform the beneficiary by the same means within a maximum of three working days.

Reporting obligations, violation of regime, supervision and regulation

Cases covered by the moratorium shall be reported to the Central Credit Register.

Failure by financial institutions or beneficiaries to comply with the regime shall subject them to the respective legal consequences (*civil, administrative, criminal, as applicable*).

The Bank of Portugal is responsible for the supervision and oversight of the moratorium regime.

Regulatory power is conferred on the member of the Government responsible for the area of finance and on the Bank of Portugal.

Guarantees and counter-guarantees

The Law provides for a special regime for granting guarantees to the State, in particular for credit or other financial transactions.

It also provides for a special regime for granting guarantees by mutual guarantee societies (*sociedades de garantia mútua*).

Duration

The regime entered into force on 27 March 2020 and is in force until 30 September 2020.

Suspension of foreclosure

Also, to remind, Law no. 1-A/2020, of 19 March 2020, determines the suspension (art. 8-b) of the mortgage foreclosure on the property which is the permanent residence of the borrower until the prevention, containment, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and the disease COVID-19, as determined by the national public health authority.

Means of payment

Decree-Law n.º 10-H/2020, of 26 March 2020, establishes the suspension of fixed commissions and the prohibition of the increase of variable commissions in payment transactions. It also establishes that entities providing automatic payment terminals may not refuse or limit the acceptance of cards for payment of any goods or services, regardless of the value of the transaction. This regime is in force until 30 June 2020.

Banking Supervisory Authorities:

The additional key releases by the banking supervisory authorities are set out below (*in chronological order*):

On 25 March 2020, the EBA issued a statement where, in addition to highlighting consumer protection and the vital importance of payment services in the current context:

calls for flexibility and pragmatism in the application of the prudential framework and clarifies that, in case of debt moratoria, there is no automatic classification in default, forborne, or IFRS9 status;

insists on the importance of adequate risk measurement and expects institutions to prioritize individual assessments of obligors' likeliness to pay when possible.

Available at: <https://eba.europa.eu/eba-provides-clarity-banks-consumers-application-prudential-framework-light-covid-19-measures>

On 20 March 2020, the ECB issued a statement, where, among others, the above issues have also been addressed.

Available at:

<https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200320~4cddbcbf466.en.html>

On 16 March 2020, the Bank of Portugal issued its Circular Letter no. CC/2020/00000017, regarding measures on flexibility in regulatory and supervisory requirements to provide relief in the contingency situation arising from the COVID-19 outbreak. This Letter is based on and, within the scope of its authority, develops measures around these matters.

Available at: https://www.bportugal.pt/sites/default/files/anexos/cartas-circulares/405553872_8.docx.pdf

On 12 March 2020, the EBA issued a statement with two main emphasises:

supporting banks' focus on core operations

making use of the flexibility already embedded in existing regulation

Available at: <https://eba.europa.eu/eba-statement-actions-mitigate-impact-covid-19-eu-banking-sector>

NOTE - In order to make our Clients aware of the main impacts that COVID-19 may have on its activities, VdA has created a group dedicated to matters related to COVID-19 in Portugal that provides diversified information in several legal areas. The information is available on our [website](#).