

On March 26, 2020, Decree-Law no. 10-J/2020 was published, which **establishes exceptional measures to protect the credits of families, companies, private social solidarity institutions (IPSS) and other social economy entities**, as well as a special regime of state guarantees in the context of the Covid-19 disease. This law, which will be in force until September 30, 2020, essentially provides as follows:

- I. Suspension and extension of payment of instalments for most credit operations, both by persons, companies and other entities, and prohibition of revocation of contracted credit lines;**
- II. Adoption of a special State guarantee regime;**
- III. Flexibility in the provision of guarantees by mutual guarantee societies.**

I. Moratorium

1. Who can be the beneficiary of the support measures?

The measures apply to natural persons and legal persons identified in the legal act, as follows:

GENERAL REQUIREMENTS (APPLICABLE TO BOTH NATURAL AND LEGAL PERSONS)

- Have their residence (Natural Persons) or have their headquarters and perform their economic activity in Portugal (Legal Persons);
- Have their obligations to the Tax and Customs Authority and the Social Security paid, not taking into account until April 30, 2020 the debts constituted until March of this year;
- Are not, on March 18, 2020, in delay or have not paid cash benefits for more than 90 days with the institutions, or if they do not comply with the materiality criterion set out in Notice of Banco de Portugal No 2/2019 and Regulation (EU) 2018/1845 of the European Central Bank;
- Are not in a state of insolvency or suspension or cession of payments or, on March 18, 2020, are already in execution by any of the institutions.

SPECIAL REQUIREMENTS

- **NATURAL PERSONS**, for **permanent home loans**, when they are in one or more of the following situations:
 - prophylactic isolation or disease situation;
 - provide assistance to children or grandchildren;
 - have been placed on reduction of the normal working period, on suspension of the employment contract due to a business crisis or in a situation of registered unemployment at the Instituto do Emprego e Formação Profissional, I. P.;
 - are workers eligible for the extraordinary support for the reduction of economic activity of self-employed workers or workers of entities whose establishment or activity has been closed down determined during the period of the state of emergency.

- **SOLE PROPRIETOR**

- **COMPANIES** which are classified as micro-enterprises, small or medium-sized enterprises

- **OTHER COMPANIES**, regardless of their size, that are not part of the financial sector

- **PRIVATE SOCIAL SOLIDARITY INSTITUTIONS**

- **NON-PROFIT ASSOCIATIONS AND OTHER SOCIAL ECONOMY ENTITIES**

2. Which credit operations are covered?

These measures apply to credit operations granted by credit institutions, credit finance companies, investment companies, leasing companies, factoring companies and mutual guarantee companies, as well as by branches of credit institutions and financial institutions operating in Portugal (jointly "institutions").

The following **operations are excluded**:

- i. Credit or financing to purchase securities or positions in other financial instruments, whether or not secured by such instruments;

- ii. Credit granted to beneficiaries of regimes, subsidies or benefits (namely fiscal) to establish their head office or residence in Portugal, including for investment activities, with the exception of citizens covered by the “Return Programme” (Programa Regressar);
- iii. Credit granted to companies for individual use by credit cards of members of the board of directors, supervisory bodies, employees or other staff.

3. Should leasing and factoring operations be considered covered by this law? If so, do natural persons also benefit?

Yes. Although such operations are not specifically envisaged, they should be considered as covered since they are also credit operations. However, only entities that are not natural persons have access to this regime, except for property leasing contracts concluded with consumers whose purpose is permanent owner-occupied housing.

4. Which support measures are available?

The beneficiary entities are provided with the following measures:

- i. The lines of credit and loans, for amounts contracted as of 27 March, cannot be terminated (in whole or in part) until September 30, 2020;
- ii. All credits with payment of capital at the end of the contract (together with all its associated elements, including interest and guarantees, notably provided by means of insurance or securities) shall be extended for a period equal to the term of this measure;
- iii. The payment of the capital, rents and interest due to expire by the end of the period of application of this measure, relating to credits with repayment in instalments of capital or with partial maturity of other cash instalments, shall be suspended during the period of application of this measure, and the contractual plan for payment of the capital, rents, interest, commissions and other charges shall be automatically extended for the same period as the suspension, and all the elements associated with these contracts (including guarantees).

5. Does the extension of payment periods (by extension or suspension) of capital, rents, interest, commissions and other charges imply any consequence?

The extension of payment periods for capital, rents, interest, commissions and other charges does not give rise to any:

- i. Breach of contract;
- ii. Activation of early maturity clauses;
- iii. Suspension of interest due during the extension period, which shall be capitalised at the value of the loan with reference to the time at which they are due at the prevailing contract rate;
- iv. Ineffectiveness or termination of credit guarantees, such as insurance, sureties and guarantees.

6. Does the extension of guarantees require any formality?

No. The extension of guarantees (including insurance, guarantees and sureties) does not require any formality, opinion, authorization or prior act by any other entity and are fully effective and enforceable against third parties. When necessary, the respective registration should be promoted by the institutions without the need to present any other document and with waiver of the subsequent deal.

7. Does the option to suspend the payment of capital and interest imply the payment, after 30th September 2020, of the interest accrued up to that date?

Yes. Although there is no payment of capital and interest until September 30, 2020, there is no suspension of the interest due. This means that interest continues to fall due in the period covered by this support measure, being capitalized and included in the debt amount. In order to avoid this, the beneficiary entities should request the institutions that the suspension only applies to the payment of capital.

8. How to access the support measures?

In order to access these measures, beneficiaries shall send, by physical or electronic means, to the institution which granted the credit a declaration of adherence to the implementation of the moratorium.

In the case of **natural persons and sole proprietors**, the declaration must contain their signature and, in the case of **companies, private social solidarity institutions, non-profit associations and other social economy entities**, it must be signed by their legal representatives. The declaration must also be supported by documentation proving the compliance with their tax and social security obligations.

Upon receipt of the declaration and documentation, the institutions shall implement the measures within a maximum of 5 working days and with effect from the date on which they are submitted.

9. May the institutions refuse to grant the support measures or demand other solutions?

No. If the beneficiary entities fulfil all the requirements and submit the declaration of adherence to the implementation of the moratorium, the institutions are obliged to implement it.

10. Do delay or default of payments relating to other credit contracts prevent the access to support measures?

No. Only natural or legal persons who were, on March 18, 2020, over 90 days in delay or in default of the payments relating to the credit contract for which the support measures are requested prevent the access to those measures.

11. What happens in the event of insolvency or use of Special Revitalisation Procedure or Extrajudicial Company Recovery Regime of the beneficiary entity?

The adherence to the application of the moratorium is without prejudice to the possibility that the institutions may continue to exercise, in accordance with the applicable legislation, all the actions inherent to their rights in the event of a declaration of insolvency or use of the Special Revitalisation Procedure or Extrajudicial Company Recovery Regime by the beneficiary entity.

12. How to inform about the support measures?

The institutions have the duty to publicise and advertise the support measures on their websites and in their usual contacts with their customers. In addition, whenever the customer is a beneficiary entity, the institutions are obliged to transmit all the information about the support measures prior to the formalization of any credit contract.

13. What are the consequences of undue access to support measures?

Anyone who accesses the support measures without fulfilling the respective requirements, as well as anyone who subscribes to the required documentation, shall be liable for any damage resulting from false declarations and for the costs incurred in implementing the support measures, without prejudice to any other type of liability (in particular criminal liability) generated by his/her conduct.

14. What are the main criticisms and shortcomings of this extraordinary regime?

Although it is understood that the extraordinary and urgent nature of the measures now taken may justify some inadequacies of the regime, it should be warned that no measures are envisaged in relation to financial operations of great importance and with wide expression among Portuguese consumers, namely:

- consumer credit and other personal credits;
- credit for the purchase of property other than permanent owner-occupied housing;
- credits to support construction and which are often contracted together with housing loans;
- payments of monthly fees due under insurance contracts, with special emphasis on health and life insurance contracts.

It should be noted that in recent years consumption by families has been strongly encouraged as part of our country's economic recovery strategy. Therefore, the absence of protection measures in this area may result, in the short term, in a situation of generalized non-compliance with the decrease in disposable income to face such burdens.

II. Special Regime of Personal Guarantees of the State

15. Can the State or other legal persons governed by public law provide personal guarantees? If so, under what circumstances?

Yes. Due to the national economic emergency caused by the Covid-19 pandemic, the State and other legal persons governed by public law may provide personal guarantees within the maximum limits for the granting of personal guarantees provided for in the State Budget Law.

The member of the Government responsible for the area of finance may authorise the granting of guarantees, namely to ensure credit operations or other financial operations to guarantee

liquidity or any other purpose, to companies, private social solidarity institutions, non-profit associations and other entities of the social economy or to any other entities with headquarters in the European Union, including European institutions, instruments or mechanisms.

16. How important is this line of personal guarantees?

The creation of this public guarantee line is intended to facilitate access to credit by economic agents at a time when such access is particularly difficult due to the lack or loss of value of the guarantees normally used in credit operations.

17. Can natural persons use this mechanism to contract credit with institutions?

No. This measure is addressed exclusively to companies, private social solidarity institutions, non-profit associations and other entities of the social economy, as well as any other entities based in the European Union, including European institutions, instruments or mechanisms.

18. How can the request for personal guarantees by the State be carried out?

The request shall be addressed to the member of the Government responsible for the area of finance, through the Directorate General of Treasury and Finance, and shall be supported by the essential elements of the operation to be guaranteed, including the respective amount and term, without prejudice to additional elements that may be requested for the risk assessment of the operation and the definition of the conditions of the guarantee to be granted.

The request shall be subject to a favourable opinion from the Government member of the activity sector of the guarantee beneficiary if it is concluded that the operation falls within the scope of the Government's policy of response to the national economic emergency situation due to the Covid-19 disease, the guarantee beneficiary is relevant to the national economy, the entity who request the guarantee presents economic viability and there is an express need for a personal guarantee from the State.

III. Provision of Guarantees by State Mutual Guarantee Companies

19. What are the conditions under which mutual guarantee societies may grant guarantees?

In the context of exceptional and temporary measures in response to the Covid-19 pandemic, mutual guarantee societies may grant guarantees to beneficiaries or other legal entities, either natural or legal, which are not shareholders, provided that the issue is specifically authorized by

the government members responsible for the areas of economy and finance and that the financial products subject to these guarantees are identified.

IV. Entry into Force and Taking Effects

This decree came into force on March 27 and will be in force until September 30, 2020.

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