

INSOL Europe/LexisNexis coronavirus COVID-19 Tracker of Insolvency Reforms—Portugal

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Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Portugal prompted by the coronavirus (COVID-19) pandemic. Written by Alberto Nunez-Lagos, member of INSOL Europe, David Sequeira Dinis, partner at Uria Menedez—Proenca de Carvalho, member of INSOL Europe and Maria de Almeida Teixeira, associate at Uria Menedez—Proenca de Carvalho.

On 18 March 2020, the state of emergency was declared by [Decree of the President of the Republic n.º 14-A/2020](#), which granted the Portuguese Government the power to implement measures to prevent and contain the spread of the outbreak of coronavirus, and on 20 March 2020, the exceptional measures to be implemented during the term of the state of emergency were approved by the Portuguese Government, under the terms of Decree of the Council of Ministers No 2-A/2020. As the declaration of the state of emergency could only be in force for 15 days, through Decree No 17-A/2020 of 2 April 2020, the President of the Republic extended the state of emergency and granted the Government new powers to introduce exceptional measures. Following this, by means of [Decree No 2-B/2020](#) of 2 April 2020, the Government approved exceptional measures to be implemented during the extension of the state of emergency (thus revoking Decree n.º 2-A/2020). On 17 April 2020, the state of emergency was again extended until 2 of May 2020, through [Decree of the President of the Republic n.º 20-A/2020](#) of 16 April 2020, following which the Portuguese Government approved exceptional measures to be implemented, through [Decree n.º 2-C/2020](#) of 17 April 2020 (thus revoking Decree n.º 2-B/2020).

In the meantime, the Portuguese Government declared the state of calamity, through the [Council of Ministers Resolution n.º 33-A/2020](#) of 30 April 2020, to be in force from 3 May to 17 May 2020. The state of calamity can only be in force for 15 days, although it can be extended. In addition, the Portuguese Government approved exceptional measures to be implemented during the term of the state of calamity. Although slightly less restrictive, the said exceptional measures still impose several limits and constraints to the movement of persons and to certain economic activities, besides keeping a mandatory remote-working regime (unless the performance of the working duties requires physical presence).

To date, the legislative framework adopted to deal with coronavirus only includes one measure regarding insolvency law. Therefore, the rest of current legislation remains in force. Some other exceptional measures with potential impact in insolvency / restructuring proceedings were approved by the Portuguese Government.

Duty to file for insolvency

Under [Article 7\(6\)\(a\) of Law 1-A/2020](#) of 19 March 2020, as amended by [Law 4-A/2020](#) of 6 April 2020, the duty of a debtor to file for insolvency within 30 days of the date on which the debtor became or should have become aware of its insolvency, set forth in Article 18 of the Insolvency and Company Recovery Code (Código da Insolvência e Recuperação de Empresas), is suspended. The suspension took effect on 9 March 2020 and will cease on a date that is to be set through a decree-law.

Moreover, the aforesaid suspension does not prevent the debtor from voluntarily filing for insolvency. Furthermore, the creditors can also file for the debtor's insolvency, provided that the legal requirements are met.

Procedural measures

Originally, Law 1-A/2020 of 19 March 2020 established a general suspension of deadlines in urgent proceedings, allowing procedural acts to be carried out through means of remote communication (eg teleconference or video calls) and in-person hearings in which fundamental rights were at stake to take place.

By contrast, in the wording introduced by [Law 4-A/2020](#) of 6 April 2020, urgent proceedings shall continue to be processed normally, although with some restrictions in respect of acts that require the physical presence

of the parties. In this case, the deadline for these proceedings will also be suspended if it is not possible that such acts are carried out through means of remote communication and the physical presence of the parties entails relevant risks to life, physical integrity, mental health, freedom and immediate subsistence.

In light of the above, according to our best understanding (although we cannot exclude alternative interpretations), deadlines in insolvency proceedings, special revitalisation proceedings (PER) and special payment-agreement proceedings (PEAP) were suspended between 9 March and 7 April 2020. Furthermore, it is foreseeable that, despite the non-suspension of the proceedings from 7 April 2020 on, there will be a considerable slowdown in the courts' processing of insolvency proceedings, PERs and PEAPs, with a tendency towards mainly performing steps of particular urgency, such as those necessary for the survival of companies, the payment of salaries or the livelihood of debtors.

Moratorium on credit transactions

[Decree-Law n.º 10-J/2020](#) of March 26 2020 approved a set of measures aimed at ensuring the continued financing of families and businesses in order to prevent events of default and includes a statutory moratorium until 30 September 2020 ('Moratorium').

The Moratorium is applicable, with a few exceptions, to credit transactions granted by:

- (i) credit institutions, financial credit institutions, investment firms, financial leasing companies, factoring companies, mutual guarantee societies or by
- (ii) branches of credit and financial institutions operating in Portugal

The Moratorium does not apply to:

- (i) credit or financing for the acquisition of securities or of positions in other financial instruments
- (ii) credit granted to beneficiaries of regimes, subsidies or benefits, including tax benefits, for the purpose of moving their registered offices or residence to Portugal, including for investment purposes (with the exception of citizens covered by Programa Regressar); or
- (iii) credit granted to companies by means of credit cards for personal use for managers, employees and other collaborators

The following types of debtors may benefit from the Moratorium, provided that all cumulative legal requirements are met:

- (a) companies which:
 - (i) have their head office and carry out an economic activity in Portugal
 - (ii) are deemed a micro, small or medium-sized enterprise or (regardless of their size) do not belong to the financial sector
 - (iii) have no debt obligations towards the Portuguese Tax Authority or the Social Security
 - (iv) are not insolvent and have not suspended or ceased payments
 - (v) as at 18 March 2020, were not subject to any enforcement proceedings filed by any of the institutions granting the moratorium; and
 - (vi) as at 18 March 2020, were not in default for more than 90 days to the institutions that would grant the moratorium or, alternatively, did not meet the materiality criteria set out in Notice 2/2019 of the Bank of Portugal (Aviso do Banco de Portugal n.º 2/2019) and in [Regulation \(EU\) 2018/1845](#) of the European Central Bank of 21 November 2018
- (b) individual entrepreneurs, private charitable institutions, non-profit associations and other social economy entities (Social economy entities that meet the requirements set out in article 136 of the Mutual Associations Code (Código das Associações Mutualistas), approved in the annex to Decree-Law no. 59/2001 of 2 August 2020, are not eligible for the moratorium), which:
 - (i) are domiciled or have their head office in Portugal
 - (ii) have no debt obligations to the Portuguese Tax Authority or the Social Security

- (iii) were not insolvent and had not suspended or ceased payments as at 18 March 2020
 - (iv) were not (as at 18 March 2020) subject to enforcement proceedings filed by any of the institutions that would grant the Moratorium;
 - and (v) were not (as at 18 March 2020) in default for more than 90 days to the institutions that would grant the Moratorium or, alternatively, did not meet the materiality criteria set out in Notice 2/2019 of the Bank of Portugal and in [Regulation \(EU\) 2018/1845](#) of the European Central Bank of 21 November 2018
- and (c) natural persons in relation to loan homes who:
 - (i) reside in Portugal
 - (ii) have no debt obligations to the Portuguese Tax Authority or the Social Security
 - (iii) were not insolvent and had not suspended or ceased payments as at 18 March 2020
 - (iv) were not (as at 18 March 2020) subject to enforcement proceedings filed by any of the institutions that would grant the Moratorium; and
 - (v) were not (as at 18 March 2020) in default for more than 90 days to the institutions that would grant the Moratorium or, alternatively, did not meet the materiality criteria set out in Notice 2/2019 of the Bank of Portugal and in [Regulation \(EU\) 2018/1845](#) of the European Central Bank of 21 November 2018
 - and (vi) meet at least one of the following requirements:
 - ▶ (a) are in isolation, are ill or are taking care of children or grandchildren
 - ▶ (b) have suffered a reduction in their ordinary working hours or have their employment contracts suspended due to a business crisis
 - ▶ (c) are registered as unemployed with the Instituto do Emprego e Formação Profissional
 - ▶ (d) are eligible workers for the extraordinary support programme set up for self-employed workers whose economic activity has been reduced; or
 - ▶ (e) are workers at an entity whose establishment or activity has been closed during the state of emergency pursuant to Article 7 of the Decree of the Council of Ministers 2-A/2020, of 20 March 2020

The beneficiary must apply to the creditor for the Moratorium and include documentation proving that it has no tax or social security debts. If the beneficiary meets the requirements, the creditor must implement the Moratorium within a maximum of five working days from the date of the submission of the relevant application. Otherwise, the creditor has up to three working days to inform the beneficiary that it does not meet the requirements. Those who apply for and benefit from the Moratorium without fulfilling the legal requirements, as well as persons that sign the required documentation (eg the application for the Moratorium), are liable for any damage caused due to false declarations and for the costs incurred in relation to the Moratorium, notwithstanding any criminal liability that may arise. The Bank of Portugal supervises and monitors the access to and the use of the Moratorium. The creditors' breach of their obligations under the Moratorium constitutes an administrative offence.

The Moratorium has, inter alia, the following effects:

- (i) prohibition on terminating, in part or in full, the credit lines contracted and the loans granted in the amounts agreed as at 27 March 2020, for as long as the Moratorium is in force
- (ii) extension, for a period equal to the duration of the Moratorium, of the deadlines of all bullet loans that are in force on 27 March 2020, together with all their associated elements (including interest and guarantees, such as those provided through insurance or in negotiable instruments)
- (iii) suspension of principal, rent and interest payments due until the end of the Moratorium, in relation to credits with instalment payments of the principal or other pecuniary sums. The payment schedule of principal, rent, interest, fees and other charges stipulated in the contract shall be automatically extended for a period of time equal to the suspension, in order to ensure that there are no charges other than those which may arise from the variability of the reference in-

interest rate set out in the contract. All elements associated with the contracts covered by the measure, including guarantees, are also extended

The extension of the deadline for payment of the principal, rent, interest, fees and other charges, under the measures referred to in points (ii) and (iii) above does not:

- constitute breach of contract
- trigger acceleration clauses or
- cause the ineffectiveness or termination of any guarantees, including insurance, personal guarantees (fiança) and/or 'aval'

Furthermore, the extension of guarantees under the Moratorium does not require any other formality and is fully effective and enforceable against third parties. In addition, interest shall continue to accrue during the extension period and will be capitalised with reference to the time at which they are due at the contractual rate in force.

Finally, in the event of insolvency, PER or RERE (Regime Extrajudicial de Recuperação de Empresas) of the beneficiary, the Moratorium does not prevent creditor institutions from exercising all their rights.

Other pending reforms

At the time of writing, the Portuguese legislator is working on the transposition of the EU Directive on restructuring and insolvency (see Practice Note: [Harmonising insolvencies and restructurings across Europe](#)). Although the Portuguese insolvency system already provides a pre-insolvency framework and promotes a rescue culture, some of the features of the EU Directive could help prevent insolvency and liquidation due to the current coronavirus outbreak, namely by prioritising the restructuring/recovery, when possible, and increasing the efficiency of the proceedings.

INSOL Europe/LexisNexis Coronavirus Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: [Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).



We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.