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TERESA PATRÍCIO & ASSOCIADOS

SOCIEDADE DE ADVOGADOS

# COVID-19

## Survival Guide for Companies

**Updated version**



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**Which immediate measures and precautions should Companies take to face the situation caused by the outbreak of the COVID-19 virus?**



- ✓ Keep a record of the infected employees in quarantine and prophylactic isolation, especially if the company continues to operate (with due regard for the applicable rules on personal data protection).
- ✓ Keep in constant contact with the company's health and safety services for the measures to be taken in each specific case, including when it is necessary, to prepare safety data sheets for procedures that prove necessary for the employees' and customers' safety.
- ✓ Place all employees in remote working regime whenever the functions allows it.
- ✓ Verify which support and extraordinary regimes are in force, that may be potentially applicable to the specific case and to the employees at their service (we indicate some below).



- ✓ Confirm whether, and under what terms, the obligations arising from the declaration of the State of Emergency impact or limit the company's activity, namely, whether the company's activity allows it to continue operating.
- ✓ Verify how to overcome logistical situations, such as the remote signature of documents or drawing up statements that allow the movement of the employees in the performance of their duties.
- ✓ Review all contracts in force and any clauses providing for cases of force majeure, in order to foresee and/or avoid potential breaches of contract.
- ✓ Reviewing insurance contracts, including director and manager liability (D&O) insurance contracts.
- ✓ When applicable, check the current terms on which electronic means of payment are made available to consumers.

- ✓ Analyze the feasibility of implementing extraordinary measures, namely, in terms of compliance with tax obligations and social contributions (we indicate some of them below).
- ✓ Confirm what credits the company has and request information from the entities providing the loan as to whether it is possible to request, depending on the case, a grace period for payment, extension of credits or the respective suspension (we indicate below some situations in which this is possible).
- ✓ Analyze the possible need to use credit lines to support treasury/cash or other needs of the company, depending on the economic activity developed.



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**WORKING REMOTELY**



## **Are companies obliged to make their employees work remotely?**

Yes. Currently, it is mandatory to adopt the remote working regime, regardless of the employment relationship, whenever the function in question allows it.

## **Does the implementation of the remote working regime need to be formalized by entering into a contract for the subordinate provision of remote working?**

No. In view of the contingency situation in which we find ourselves, the formalization of the remote working is not necessary. We suggest, however, that an e-mail should be sent to the employees to clarify the circumstances in which work should be organized and which employees can work remotely. It should also be clarified that this is a containment measure and, therefore, it has a temporary nature, being only applicable during the necessary period.

## **Does the company have to pay food allowance to the employees in remote working?**

Yes, the authorities have already clarified that remote workers, under the current pandemic containment, have the same rights as when they were at the workplace.



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Yes, the authorities have already clarified that remote workers, under the current pandemic containment, have the same rights as when they were at the workplace.

## **Does the company have to inform Social Security about the existence of employees working remotely?**

No. However, the company must inform the insurer responsible for occupational accident insurance which employees are working remotely, so that, in the event of any incident, the insurer is duly informed of the locations from which the employees are undertaking their activity (and their working hours).



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# SIMPLIFIED LAY OFF



## **What are the extraordinary support measures for companies and employees affected by the COVID-19 pandemic, currently in force, with a view to maintaining jobs and mitigating corporate crisis situations?**

The following measures are currently in force:

- Extraordinary support for the maintenance of employment contracts in companies in a business crisis, amounting to 2/3 of the remuneration, with Social Security paying 70% of this amount, the remainder being supported by the employer (simplified lay off);
- Extraordinary IEFP training plan, with a support that can reach up to €635 per employee;
- Temporary exemption from the payment of Social Security contributions by the employer;
- Extraordinary financial incentive to support the normalization of the company's activity, in the amount of €635 per employee.

## **What is the extraordinary support measure for the maintenance of employment contracts in companies in a situation of business crisis (simplified lay off)?**

This support takes the form of financial support attributed to the company, intended exclusively for the payment of remuneration, in periods of temporary reduction of working hours or suspension of employment contracts.



## Who can use the simplified lay off?

The following employers can use this measure:

- Commercial companies, regardless of corporate form, cooperatives, foundations, associations, federations and confederations;
- Self-employed persons who are employers.

## Under what circumstances is the simplified lay off applicable?

Companies in a situation of business crisis may have recourse to this regime due to one of the following situations:

- Total or partial closure of the company or the commercial establishment, resulting, in general terms, from legal, administrative or health authority imposition;
- Total or partial stoppage of the activity of the company or the commercial establishment, due to the interruption of global supply chains, or the suspension or cancellation of orders, which can be documented, with the result that the use of the affected enterprise or unit will be reduced by more than 40% of its production or occupancy capacity in the month following the request for support;
- Abrupt and sharp decrease of at least 40% of revenue, in the period of thirty days prior to the order

## **How is the reduction of 40% in the revenue determined?**

The reduction of 40% is measured by comparing the invoicing in the 30 days preceding the request and:

- The monthly average of the two months preceding that period; or
- The same period in the previous year; or
- For those who started less than 12 months ago, the average of that period.

## **How the 30 days are counted?**

The 30 days are counted continuously. The reference period shall be the 30-day period immediately preceding the request, and it is not necessary to fall within a complete month.

## **For companies that started their activity less than 12 months ago, how is the loss of revenue calculated?**

The loss of revenue is calculated by comparing the average invoicing amount for the 30 days immediately preceding the request date with the average invoicing amount since the date when the activity started.



## **What is the procedure to be adopted in order to apply for the simplified lay off?**

The company must send, through the Social Security online platform, an electronic form, accompanied by:

- Declaration with a brief description of the business crisis situation;
- Certificate of the certified accountant of the company attesting the verification of the business crisis situation, in the cases of:
  - Total or partial stoppage of the company or establishment's activity;
  - Abrupt and sharp decrease in at least 40% of revenue.
- Nominal listing of the employees covered and their Social Security number, in an Excel file, under the terms made available online by Social Security.

Companies must have their respective IBAN registered with Social Security (they can do so through Social Security website).

## **If the company uses the lay off, does it have to suspend the employment contract of all its employees?**

No. The lay off may imply the suspension of employment contracts and/ or the reduction of the normal period of work, and the two regimes may be in force in the same company at the same time, covering all or just some employees.

## **Is it necessary to have the employee's agreement?**

The application of this regime does not require the employee's agreement. However, the decision to resort to this measure, must be communicated to the employees, in writing (for example, by sending them a professional e-mail from the company), indicating the expected duration. Before proceeding with the communication, the company should listen to the union delegates and employees' committees, when they exist.

## **What happens to employee's remuneration during the simplified lay off?**

Regardless of a situation of reduction in the normal working period or suspension of contracts, the employees retain the right to receive monthly a minimum amount equal to  $\frac{2}{3}$  of their normal gross remuneration or the value of the "Minimum Monthly Guaranteed Income (RMMG)", corresponding to the normal working period, whichever is higher and with a maximum limit of three times the RMMG (€1.905).

## **How is the remuneration calculated in the event of a reduction in the normal working period?**

In a situation where the normal working period is reduced, the amount is calculated in proportion to the hours worked, without prejudice to the application of the limits mentioned above.



## **Who pays the employee's remuneration?**

The Social Security ensures the payment of 70% of 2/3 of the gross normal remuneration of each employee covered, with a minimum amount of €444,50 and a maximum amount of €1.333,50 per employee.

The employer must ensure the payment due to each employee covered, which may not be less than RMMG (€635), nor more than three times this remuneration (€1,905), and the Social Security will transfer the respective contribution to the employer.

We advise consulting the table included (below) with respect to the family assistance rights.

## **What are the items that integrate the concept of “normal gross remuneration” of the employees?**

The concept of “normal gross remuneration” should include the basic remuneration, diuturnities and all other regular and periodic payments inherent to the provision of work.

In the instructions for filling out Social Security form RC3056 (lay-off) it is mentioned that the items that integrate the monthly gross remuneration will be those that are classified, within the scope of the Remuneration Statement, with the codes “P” (basic remuneration) , “B” (monthly premiums) and “M” (regular monthly allowances). As an example, shift allowance and special compensation for exemption from working hours should be considered. Commissions are excluded (code “C”).



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**Does this support cover directors and company administrators?**

No

**What is the duration of this extraordinary support measure?**

The lay off will have an initial duration up to one month and may be extended monthly, up to a maximum of 3 months, until 30 June 2020.

**Can companies, that have their contributory and/or tax status to be regularized, benefit from this extraordinary support measure?**

No. Having their tax and social security situation before the Social Security and the Tax Authority in order, is a requirement of access to this support measure

However, until 30th April 2020, the debts constituted in March 2020 are not considered.



## **Can the managing partners of companies and members of statutory bodies of foundations, associations or cooperatives with functions equivalent to those, benefit from some support?**

Yes. They can request extraordinary support from the Members of Statutory Bodies, through the Social Security website, provided that:

- They have no employees;
- They are exclusively covered by the social security regime in that capacity (members of statutory bodies);
- In the previous year (2019) the invoicing reported in the e-facture system is less than € 60,000.00.

## **What does this support consist of and what is the duration?**

- In situations where the value of the remuneration recorded as a base of incidence is less than 1.5 IAS (€ 658.22), the support will correspond to the value of the remuneration recorded as a base of contributory incidence, with the maximum limit of the value of 1 IAS (€ 438.81);
- In situations where the value of the registered remuneration is equal to or greater than 1.5 IAS (€ 658.22), the support will correspond to 2/3 of the value of the registered remuneration as a contributory base, with the maximum limit of the amount of the RMMG (€ 635.00).

This support has a duration of one month, starting in April, and with a maximum extension of six months. Payment will be made from the month following the submission of the application.



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## **What other rights are associated with this measure?**

This measure is associated with the deferral of payment of contributions due in the months in which the financial support is being paid. However, this support does not entitle you to an exemption from payment of Social Security contributions.



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# PROFESSIONAL TRAINING



## **What is the extraordinary support measure for part-time professional training?**

This extraordinary support lasts for one month and is granted according to the hours of training attended, up to a limit of 50% of the gross remuneration, with a maximum ceiling of RMMG (€635) per employee.

## **Who bears the costs of this support?**

The costs are borne by IEFP, I.P.

## **Who will cover the scholarship and the professional training costs?**

The scholarship and the professional training costs will be supported by IEFP, I.P.

## **Under which circumstances is the extraordinary support for part-time professional training applicable?**

The companies in a business crisis situation that have not resorted to the extraordinary support measures to help pay the employees' remuneration, can access the extraordinary support for part-time professional training, through a training plan, to maintain their respective jobs and the strengthening of the employee's skills, in order to act preventively against the unemployment.



## What is the procedure to be adopted for a company to access this measure?

The company must inform the employees, in writing, of its decision to initiate professional training, indicating the expected duration of the measure.

The company must submit, through the respective online portal, an electronic application, accompanied by:

- A declaration that attests to this fact, in situations of total or partial closure of the company or establishment, as a result of the duty to close factories and establishments by legal, administrative or health authority imposition;
- Declaration by the employer and certificate of the certified accountant of the company attesting to the verification of the business crisis situation, in case of:
  - Total or partial stoppage of the activity of the company or establishment;
  - Abrupt and Sharp decrease of at least 40% of revenue;
- In both situations, a nominative list of the employees covered and the respective Social Security number, in an Excel file.

**During the term of these extraordinary measures, is the obligation to pay Social Security contributions, under the responsibility of the employer, maintained?**

No. During the period in which these measures are in force, employers are entitled to a total exemption from the payment of Social Security contributions, with respect to the workers covered and the members of the statutory bodies, ie the exemption refers to contributions referring to the months in which the company is the beneficiary of the measures, maintaining the 11% contribution for the worker.

**Is it necessary to apply for exemption?**

No. The exemption from the payment of contributions, with respect to the workers, will be officially recognized.



## **When the company is on lay-off, can the employer request professional training?**

Yes, the employer can prepare a vocational training plan and the employee has the duty to attend vocational training actions provided for in that vocational training plan.

This vocational training plan should be oriented towards;

- a) The viability of the company and the maintenance of jobs; or to
- b) The development of the professional qualification of workers that increases their employability.

## **Can the employer receive any support to provide this professional training?**

Yes, if the vocational training plan is approved by the IEFPP, this entity will pay 30% of the Social Support Index (IAS), in equal parts, to the employer and the employee (in addition to the remuneration).

## **Can the professional training given in the lay-off period count towards the annual continuous training pool?**

If the formalities required for continuing training are fulfilled, there is nothing to prevent these hours of training from counting towards the minimum annual objectives.



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# INCENTIVE TO THE NORMALIZATION OF THE ACTIVITY





## **What is the extraordinary financial incentive to ensure the normalization of business activity?**

The extraordinary financial incentive corresponds to the value of RMMG (€ 635), per worker, to be paid in one installment.

## **What is the purpose of this measure?**

This measure is intended to support companies in a first phase of returning to normality, with a view to reducing the risk of unemployment and preventing the maintenance of jobs in companies that have been in a situation of business crisis due to the outbreak of COVID-19.

## **Which entity is responsible for granting this incentive?**

The extraordinary financial incentive is granted by IEFP, I.P.

## **What is the procedure to be adopted in order to apply this measure?**

To access this incentive, the employer must submit an application to IEFP, I.P., attaching, when applicable, the following documents:

- Accounting balance sheet referring to the month of support as well as the corresponding month or previous months, when applicable;
- Value Added Tax (VAT) declaration referring to the month of support as well as the two immediately preceding months, or the declaration referring to the last quarter of 2019 and the first quarter of 2020, depending on whether the applicant is in the monthly or quarterly VAT regime respectively, which show the intermittency or interruption of supply chains or the suspension or cancellation of orders; and
- Documents demonstrating the cancellation of orders or reservations, resulting in the use of the affected company or unit being reduced by more than 40% of its production or occupancy capacity in the month following the request for support; and
- Additional supporting elements to be established by an order of the Government responsible for the area of labor and social security.



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# SUPERVISION AND RESTRICTIONS





## **Can there be an inspection of the business crisis?**

Yes. The entities benefiting from extraordinary support can be inspected, at any time, by the competent public entities, and must prove, through documentary evidence, the facts on which the support requests submitted were based.

## **What kind of documentation may be requested by the competent authorities?**

The following documents may be requested, in the applicable cases, namely:

- Accounting balance sheet referring to the month of support as well as the corresponding same month;
- Value Added Tax (VAT) declaration referring to the month of support as well as the two immediately preceding months, or the declaration referring to the last quarter of 2019 and the first quarter of 2020, as the applicant is in the monthly or quarterly VAT regime respectively, which show the intermittency or interruption of supply chains or the suspension or cancellation of orders; and
- Documents demonstrating the cancellation of orders or reservations, resulting in the use of the affected company or unit being reduced by more than 40% of its production or occupancy capacity in the month following the request for support; and
- Additional supporting elements to be established by an order of the Government member responsible for the area of labor and social security.





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### **Can companies that applied for these measures dismiss workers?**

No. During the validity of these measures and for the next 60 days, a general prohibition of dismissal applies, under which the employer will not be able to terminate employment contracts, in terms of collective dismissal or dismissal due to the extinction of the post.

### **Are companies prevented from terminating fixed-term employment contracts during these measures?**

No. Companies can report the non-renewal of fixed-term employment contracts whose term ends in this period.

## **In which situations may companies or workers repay the support granted or pay undue amounts during the period of validity of these extraordinary measures?**

This can happen when any of the following situations occurs:

- Dismissal, except for reasons attributable to the worker;
- Punctual non-compliance with the remuneration obligations owed to workers;
- Failure by the employer to comply with its legal, tax or contributory obligations;
- Profit distribution during the term of the obligations arising from the granting of the incentive, in any form;
- Non-compliance, attributable to the employer, of the obligations assumed, within the established deadlines;
- Providing false statements;
- Provision of work to the employer by the worker covered by the extraordinary support measure for the maintenance of the employment contract in the form of suspension of the contract, or beyond the established schedule, in the form of temporary reduction of the normal period of work.



## **How long can companies use these measures for?**

The measures described above are in force until 30<sup>th</sup> June 2020.

**Can Companies that are not in a situation of corporate crisis, but that take the initiative to temporarily stop their activity, in a preventive manner, in order to avoid the risk of spreading the COVID-19 virus among their employees, suppliers, customers and others, benefit from the support mentioned above?**

No. The support applies only to companies that are in a business crisis situation as defined above.

**In the case of temporary closure or temporary decrease in the activity of a company or establishment that does not fall into a situation of business crisis under the terms mentioned above, what is the applicable regime?**

In this case, companies may resort to the temporary closure regime or temporary reduction of the activity provided for in the Labor Code - Lay off - being able, in general terms, to resort to this regime on the following grounds:

- Business crisis situation (defined differently from the business crisis situation applicable to the simplified lay off);
- Unforeseeable circumstances or force majeure.

## **Can employers who do not use extraordinary support measures to maintain employment contracts carry out redundancies during the period of validity of the declaration of the State of Emergency?**

Yes, as long as they comply with all legal procedures required by the specific form of termination of the employment contract in question, under the general law.

## **In which situations can the Labor Conditions Authority (ACT) suspend the dismissal?**

During the State of Emergency, ACT has extraordinary powers to, in the event that it finds evidence of an unlawful dismissal (without the legal requirements and mandatory formalities having been fulfilled), draw up a report and notify the employer to rectify the situation .

With this notification and until the situation is regularized or until the judicial decision becomes final, as the case may be, the employment contract does not end, maintaining all the rights of the parties, namely the right to receive remuneration and the inherent obligations towards Social Security.



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# LAY OFF PROVIDED IN LABOUR LAW





## **What is the lay off provided for in Labor Law?**

It is the temporary reduction of normal working periods or the suspension of employment contracts, due to market, structural or technological reasons, disasters or other events that have seriously affected the company's normal activity, provided that such a measure is essential to ensure the viability of the company and the maintenance of jobs.

This lay off has a longer and more complex process, which is why the lay off implemented in the context of the COVID-19 crisis is called “simplified”.

However, given that their requirements are more comprehensive, it can be a way of allowing lay off to companies that cannot use simplified lay off.



## **What happens to the workers' remuneration during the lay off provided for in Labor Law?**

In case the lay off is due to a business crisis (defined differently from the business crisis situation applicable to the simplified lay off), the employee's remuneration will correspond to a minimum amount equal to 2/3 of his normal gross remuneration or the value of the Guaranteed Minimum Monthly Remuneration (RMMG), corresponding to the normal working period, whichever is higher and with the maximum limit being triple the RMMG (€ 1,905).

When the use of the lay off is due to force majeure, workers retain the right to receive 75% of the remuneration.

We advise you to consult the table included (below) in the family rights assistance.

## **If the company makes use of the Lay off regime provided for in Labor Law, does it have support in the payment of compensation to workers?**

In the event that the lay off is due to a business crisis, 70% of the worker's compensation will be paid by Social Security and 30% by the employer.

When the use of the lay off is due to force majeure, the remuneration is entirely the responsibility of the company.



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# RIGHT TO ASSIST A FAMILY MEMBER





**In the current context of combatting the pandemic of the disease COVID-19, has an exceptional and temporary regime of justified absences been created? What are the situations covered?**

Yes. Justified absences are those motivated by:

- Assistance to a child or other dependent of the worker under 12 years of age or, regardless of age, with a disability or chronic illness, as well as a grandson who lives with the worker in a communion with the table and who is the child of an adolescent aged less than 16 years old, in periods of academic interruption legally fixed and outside of them;
- By assisting a spouse or person living in a common law relationship or common economy with the worker, relative or similar in the straight upward line that is in charge of the worker and who frequents social facilities whose activity is suspended as determined by the health authority, or by the Government, insofar as it is not possible to continue support for an alternative social response;
- For the provision of aid or transportation, in the context of the COVID-19 disease pandemic, by volunteer firefighters with an employment contract with an employer from the private or social sector, evidently called by the respective fire department.

## **What is the regime applicable to these absences?**

The absences of workers under the terms of the previous question, do not result in the loss of any rights, except with regards to remuneration and do not count towards the annual limit provided for in Labor Law.

## **In order to provide assistance to the family, can the worker book a vacation without having to agree with the employer?**

Yes. The worker is allowed to schedule a vacation, without the need to agree with the employer, by giving written notice and two days in advance of its start, with due payment for the period corresponding to that which the worker would receive if he was on effective service and in this case, the holiday allowance may be paid in full up to the fourth month following the start of the holiday period.



**What exceptional support measures are in place for employees who have to miss work to assist their child or other person dependent on the worker under 12 years of age or, regardless of age, with a disability or chronic illness?**

Employees are entitled to receive exceptional monthly or proportional support, corresponding to 2/3 of their basic remuneration, paid in equal parts by the employer and Social Security. This support has a minimum limit of one RMMG and a maximum limit of three RMMG.

This support is granted only once, and only to one of the parents.

**What if the workers are simultaneously working from home?**

If workers are providing assistance to the family but working from home, this will be considered as an effective work provision, with the worker entitled to receive 100% of the respective remuneration, paid in full by the employer.

## What is the treatment given to different situations of absence from work?

Situation	Legal Classification	Remuneration	Responsability	
			Employer	Social Security
<b>Employee infected with COVID-19</b>	Justified absence (“off sick”)	55% - up to 30 days 60% - 31 to 90 days 70% - 91 to 365 days 75% - over 365 days	0%	55% - up to 30 days 60% - 31 to 90 days 70% - 91 to 365 days 75% - over 365 days
<b>Worker in prophylactic isolation decreed by health authority</b>	Absence equated with illness with hospital admission - justified absence	100%	0%	100%
<b>Worker accompanying a child under 12 years of age in prophylactic isolation decreed by health authority</b>	Justified absence	65%	0%	65%
<b>Worker who stays at home accompanying a child up to 12 years of age due to suspension of teaching activities and whose functions do not allow teleworking</b>	Justified absence	66%	33%	33%
<b>Worker who stays at home accompanying a child up to 12 years old due to the suspension of teaching activities and whose functions allow teleworking</b>	Teleworking regime	100%	100%	0%



## What is the treatment given to different situations of absence from work?

Situation	Legal Classification	Remuneration	Responsability	
			Employer	Social Security
Employee in voluntary isolation whose duties allow remote working	-	100%	100%	0%
Employee in voluntary isolation whose duties do not permit remote working	(a) Unjustified absence (b) Justified absence and remunerated if the employer determines the isolation	(a) 0% (b) 100%	(a) 0% (b) 100%	0%
Temporary Lay-off (simplified) due to crisis	(a) Suspension of employment contract (b) Reduction of working hours	66% (minimum of €635 and maximum of €1905)	19,80%	46,20%
Temporary Lay-off (Employment Code) due to company crisis	(a) Suspension of employment contract (b) Reduction of working hours	66% (minimum of €635 and maximum of €1905)	19,80%	46,20%
Temporary Lay-off without company crisis or <i>force majeure</i>	Suspension of employment contract	75%	75%	0%

## **Until when can holiday maps be approved and circulated?**

The approval and circulation of the holiday map usually occurs until 15<sup>th</sup> April, under the general law, but may occur up to 10 days after the end of the State of Emergency.

## **Can the employer force the worker to take a vacation?**

Yes. Vacations are booked by agreement between worker and employer but, in the absence of an agreement, the employer will schedule the vacation.

However, in all companies with more than 10 workers, the employer can only schedule the vacation between 1<sup>st</sup> May and 31<sup>st</sup> October, unless the applicable Collective Agreement allows a different timeline.



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# TAX OBLIGATIONS



## **Which tax measures were approved for companies?**

The Government postponed the deadline for complying with certain tax, reporting and payment obligations, with respect to corporate tax, as follows::

- The deadline for Special Payment on Account was postponed from 31st March to 20th June 2020;
- The first Payment on Account and the Additional Payment on Account was postponed from 31st July to 31st August 2020;
- The deadline for submission on the Model 22 Declaration and payment of corporate tax was postponed to 31st July 2020.

## **What does the flexibility in complying with the tax obligations in the 2nd quarter of 2020 for companies and independent workers entail?**

This flexibility allows, on the date of payment of the tax, that the tax payer can opt between:

- Immediate payment, as normal;
- Payment in 3 monthly installments; or
- Payment in 6 monthly installments, without interest.

## **Which obligations are included in this flexibility?**

This measure includes payment of VAT, as well as the payment of withholding tax on Personal Tax and on Corporate Tax.



## To whom does this flexibility apply?

This applies to all taxpayers who have to comply with the tax obligations in the 2nd quarter of 2020, as long as they fulfill the following criteria:

- Have a revenue of up to 10 million euros in 2018;
- Develop their activity in one of the sectors that have been closed under Article 7 and Annex I of Decree no. 2-A/2020, of 20th March, as follows:
  - Recreation, Entertainment and Leisure;
  - Culture and Arts;
  - Sports, except high performance athletes;
  - Activities in open and public spaces, as well as private spaces that have been compared to public spaces;
  - Betting and gaming facilities;
  - Restaurants;
  - Hot springs, spas and similar facilities;
- Initiated their activity on or after 1st January 2019;
- Reinitiated their activity on or after 1st January 2019, when they did not have a revenue in 2018;
- Declare or show a reduction in revenue of at least 20% in the 3 months prior to the month in which the obligation arises, when compared to the same period in the previous year.

## **How is the reduction in revenue of at least 20% determined?**

The reduction in revenue of at least 20% is shown by way of a certificate provided by the company's certified accountant or chartered accountant.

This is certified with reference to the volume of business, when the reporting of the invoices via the online platform (via E-Factura) does not reflect all the operations subject to VAT, even if exempt, in relation to the period in question.

## **How can the taxpayers to whom this flexibility regime is applicable, request payment in installments?**

The request for payment in installments is made online, up until the deadline for voluntary payment.



## **When and how can the installments be paid?**

The first installment is due on the date of payment of the obligation, and the remaining installments are payable monthly on the same date as the initial payment. The general rules of the regime for the collection and reimbursement of Personal and Corporate tax, approved by Decree Law 492/88, of 30th December, are applicable.

## **If I opt for payment in installments, do I need to provide a guarantee?**

No; the tax payers (companies or independent workers) will not need to provide a guarantee if they opt for payment in installments.

## **Which measures were taken in respect of payments to Social Security?**

The following measures were approved with respect to payments to Social Security:

- The payment of the social Security contribution due on 20th March 2020 was suspended;
- The payment of the contributions due in the month of March 2020 was exceptionally extended to 31st March 2020;
- The payments of contributions due in March, April and May are now flexible and their payment may be delayed.



## Who is entitled to defer their social contributions?

Independent workers and employers, in both the private and public sector, can defer their payments in relation to February 2020 if they comply with any of the following situations:

- If they have less than 50 employees;
- If they have between 50 and 249 employees and have a reduction in revenue as outlined below;
- If they have 250 or more employees, as long as their activities are included in one of the following situations:
  - Charity or equivalent institution; or
  - If the establishment or business has been effectively closed, as a result of the State of Emergency, or is in the aviation or tourism sector, and as long as there is a decrease in revenue as outlined below; or
  - Establishments or companies that have been closed, due to their activities having been suspended, by administrative or legislative order, under Decree law 10-A/2020, of 13th March, or under the Framework Law of Civil Protection and the Framework Law of Health.

## **How is the decrease in revenue determined for the purposes of deferring the payment of social contributions?**

For this purpose, the employers will need to show, during the month of July 2020, jointly with a certificate of the company's chartered accountant, a reduction in revenue of at least 20% in the revenue of the months of March, April and May 2020 (in comparison with the previous year) or, if they have initiated activity in the last 12 months, the average of the period that has since lapsed.

This should be determined in relation to the volume of business, when the communication of the invoices (via the portal E-Factura) does not reflect all the operations subject to VAT, even if exempt, during the period in question.

## **In what way are the social contributions due in the months of March, April and May 2020 deferred?**

The contributions to be paid by the employer in the months of March, April and May 2020 can be paid in the following manner:  
1/3 of the amount is paid in the month when it is normally due;

The remaining 2/3 is paid in equal and successive installments in the months of July, August and September 2020 or in the months of July to December 2020, without interest.



## **How is the request made?**

The payment of the social contributions in this manner is automatic and does not require a specific request.

## **Does this mean that the employers are not required to make the full payment of the contributions?**

No; the employers must still pay the full amount of the contributions owing to Social Security, but can opt between making the full payment or deferring the payment over a period of time.

## **Is this deferral subject to control?**

Yes, the deferral of the payment of the social contributions is subject to control, at any time, by the competent authorities, and the beneficiaries should be in a position to prove the conditions that motivate the deferral at any time, in addition to the verification made online by the Tax Authorities, via the E-Factura platform.

## **Until when and in which manner can the deadline intended for the deferral, be communicated?**

The employers should inform, via the Social Security Direct platform, which deadline they intend using for the deferred payment of the social contributions, in July 2020.

## **What is the consequence of non-compliance with the obligation to pay 1/3 of the value of the contributions?**

The non-compliance with the obligation to pay 1/3 of the value of the contributions shall determine the immediate termination of the benefits that have been granted. The non-compliance with the requirements to benefit from the deferral of the payments will mean the immediate payment of all the installments due, as well as the end of the exemption of interest foreseen in general terms.

## **What happens to the tax and fiscal enforcement proceedings that are underway?**

The possibility of suspending the payments in installments that are in course with the Tax Authorities is provided for (only in tax enforcement proceedings) as well as with Social Security (whether or not within enforcement proceedings), in accordance with number 1 of article 7 of Law 1-A/2020, of 19th March. However, those who wish to, may continue to comply with their payments by installments.

Tax proceedings that are underway or to be commenced are suspended, at least until 30th June 2020, even if the State of Emergency ends before this date.



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# **BANKING OBLIGATIONS**



## Which measures have been adopted with respect to bank loans?

A moratorium has been approved, to be in force until 30th September 2020, that provides the following:

- Prohibition of revocation, totally or partially, of contracted loans and credit lines, in the amounts contracted when the Decree Law came into force;
- The extension of loans, with payment of capital at the end of the contract, together with the associated elements, including interest, guarantees, namely through insurance or credit titles, and/or
- The suspension of loans with partial reimbursement of capital or partial maturity of other pecuniary obligations and the contractual framework of capital, rents, interest, commissions and other expenses is extended automatically for a period identical to the period of suspension.



## Which conditions have to be met to benefit from the moratorium?

- The companies must have head office and undertake their economic activity in Portugal;
- The companies must be classified as micro, small and medium companies in accordance with the Recommendation 2003/361/CE of the European Commission of 6th May 2003. This means that companies must be classified as micro, small or medium companies at IAPMEI – for more information, please consult the following website:  
<https://www.iapmei.pt/Paginas/Certificacao-PME-Area-Empresa.aspx>;
- The companies cannot be in a situation of arrears or breach in their pecuniary payments for more than 90 (ninety) days, and cannot be in a situation of insolvency;
- The companies cannot have debts to the Tax Authorities or Social Security.

## How can this moratorium be requested?

- By filing a **declaration of registration** for the moratorium at the Bank, in paper or electronically, signed by the legal representatives.
- This declaration shall be **accompanied by documents showing that there are no debts to the tax Authorities or Social Security**, and the institutions shall apply the protective measures within a maximum deadline of **five working days** after receiving the declaration and the documents.
- If the company does not fulfill the requirements to benefit from the measures provided for in the decree law, the banks should inform them within **three working days** by way of communication in the same format used to make the request initially.
- To obtain further information on this matter, the companies should contact their banks directly.



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# CONTRACTUAL OBLIGATIONS



## **How can administrators, managers, directors and attorneys sign contracts and documents with a view to continuing the activity?**

Since the entry into force of Ordinance No. 73/2018, of 12 March, it is possible to associate the quality of administrator, manager, director or attorney to the Citizens Card, and then it is possible to use the qualified digital signature mode to sign documents and contracts (typified by law) without having to have face-to-face contact and without jeopardizing the activity.

## **Is there any way to sign contracts without having to be present?**

During the State of Emergency, scanned copies and photocopies of acts and contracts have the same value of evidence as the respective originals, except in situations where the person to whom they are presented demands the originals.

## **What about the validity of signatures of scanned copies?**

Both the qualified digital signature and the handwritten signature of digital copies of acts and contracts are valid and do not affect their validity, even if different forms of signature coexist in the same digital document.





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## **Does the declaration of the State of Emergency confer the right to terminate contracts?**

The validity of the State of Emergency and the measures that may be approved under it, may give the injured contractual party the right to resolve (termination) or to modify the terms of a contract, under the regime of mitigating or change in circumstances, provided for in the Civil Code.

## When can the contracts be terminated due to change in circumstances?

The termination of a contract due to a change in circumstances is only possible if:

- The damage caused by the State of Emergency is not within the risks of the contract;
- If the execution of the contract by the affected party will seriously affect the principles of good faith;
- There is no prior situation of arrears by the affected party in relation to their contractual obligations;
- The party that wants the termination is in conditions to return what they have received from the other party (except: (1) stipulation by the parties that they do not wish to confer any retroactive effects to the termination; (2) this rule does not apply to obligations already complied with, in contracts of continued or periodic execution).

If the requirements for the termination of the contract due to change in circumstances are not met, there may be a possibility to alter the terms of the contract.

Invoking the change in circumstances can be made by way of declaration to the other party, which should be made in writing.

Once the termination is requested by the affected party, due to the measures that have been enacted under the state of emergency, the other party may oppose the request, and propose a change to the contract as an alternative.



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# COMMERCIAL LEASES





## **What does the exceptional and temporary arrears payment system consist of?**

Flexibility or deferral of rents due on April 1, 2020, is foreseen, within the scope of non-residential urban lease contracts, with the possibility of application to other contractual forms of use of immovables (with the necessary adaptations), such as, for example, the contract for the use of a store in a shopping center and the transfer of establishment.

## **Until when will commercial tenants be able to defer rent payments?**

The non-housing tenant may defer the payment of the rent due in the months in which the State of Emergency is in force, as well as in the first subsequent month, over the 12 months after the end of that period, in monthly installments of not less than one-twelfth of the total amount, to be paid together with that month's rent.

This regime is applicable to:

- (i) Establishments open to the public for retail and service provision activities that have been closed or whose activities are suspended, including cases where tenants maintain the provision of electronic commerce activities, or the provision of services at a distance or through an electronic platform;
- (ii) Catering establishments and the like, including in cases where they maintain activity for the sole purpose of consumption outside the establishment or delivery at home.





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## **Are any deadlines related to the lease agreements that are suspended?**

Yes, the limitation and prescription periods related to urban lease contracts are suspended, such as, for example, the 5-year period for limiting the right to collect rents, as well as the deadline for the landlord to exercise the right to terminate the contract, based on grounds that occurred prior to the declaration of the State of Emergency.

On the other hand, during the validity of the measures for the prevention, containment, mitigation and treatment of the pandemic and up to 60 days after the termination of such measures, the deadline for returning the property in the case of termination, is also suspended, if the termination of this term occurs during the period of time in which those measures are in force.

## **Are the effects of termination, revocation and opposition to the renewal of non-housing lease contracts carried out before 13 March 2020, also suspended?**

Yes, during the validity of the pandemic prevention, containment, mitigation and treatment measures and up to 60 days after the cessation of such measures, the production of effects of termination, revocation and opposition to the renewal of lease contracts made by landlords before March 13, 2020 are also suspended. This does not apply in situations where the tenants are in agreement with the termination of the contract.

## **Does this suspension prevent landlords from sending notices of termination or opposition to the renewal of the lease?**

No, the respective effects are only suspended, such as the return of the property by the lessee to the landlord, after the contract has ended. Thus, the landlords will be able to make the communications of termination or opposition to the renewal (with respect to the notice periods legally provided) and the tenants, if not opposed, will be able to organize themselves, eventually, to return the property.



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**FINANCING**



## Can the companies affected by COVID 19 request financing with public support?

Yes. For this purpose, several Loan Facilities were created, which have undergone changes due to the high demand. So far, three major loan facilities have been created:

- Loan Facility Capitalize COVID-19 Working Capital and Treasury: in the amount of € 400 Million Euros (these have already exhausted);
- Loan Facility for the Tourism sector (Micro-companies): in the amount of € 60 Million Euros;
- Loan Facilities for the Covid-19 Economy: in the total amount of approximately € 6,200 million Euros (for various sectors of activity).

## Which Loan Facilities have been created?

- COVID Loan Facility - Tourism (Microcompanies)
- COVID Loan Facility - Tourism (Travel Agencies, Tourist Entertainment and Event Organization)
- COVID Loan Facility – Tourism (Developments and Accommodation)
- COVID Loan Facility – Restaurants
- COVID Loan Facility – Support for Economic Activity – recently changed



## What is the COVID Credit Line – Tourism (Micro Companies)?

- The COVID Credit Line – Tourism (Micro Companies) is a credit line with € 60 million Euros whose objective is to support the needs of micro companies in the tourism sector, to minimize the impact of the temporary reduction of demand in their activity.
- It is aimed at micro companies, certified electronically by IAPMEI, and self employed individuals, also certified electronically by IAPMEI.
- The conditions for eligibility are as follows:
  - Location (headquarters) in national territory;
  - Activity within the defined list of PPAs;
  - Have no debts towards the Tax Authorities, Social Security and Tourism of Portugal, I.P .;
  - They must be duly licensed for the exercise of the respective activity and duly registered in the National Tourism Register, when legally required;
  - They must demonstrate that the activity developed was negatively affected by the Covid-19 disease outbreak;
  - They are not in a difficult business situation;
  - Not having been subject, in the two years prior to the date of the application, to an administrative or judicial sanction for the use employees legally subject to the payment of taxes and social security contributions, not declared under the terms of the norms that impose this obligation in Portugal (or in the State of which it is a national or in which its main establishment is located);
  - Not having been convicted in the two years preceding the application date, for illegal dismissal of pregnant women, puerperal women or nursing mothers.

## What are the conditions to access the COVID Credit Line – Tourism (Micro companies)?

- The general conditions are as follows:
  - Maximum financing per company: € 750 per month, for each labour post in existence as at 29th February 2020, multiplied by the period of 3 months, up until € 20.000.
  - Reimbursement of Capital: Quarterly Installments of equal value.
  - Maximum Duration: Up to 3 years.
  - Period of Grace: Up to 12 months.
  - Interest rate subsidy: 100%.
- In this case, the interested companies should contact the Portuguese Tourism Board (<https://business.turismodeportugal.pt>).



## What is the COVID Credit Line – Tourism (Travel Agency, Tourist Entertainment and Event Organization)?

- Credit Line with €200 million, to support companies in the tourism sector (Travel Agencies, Tourist Entertainment and Event Organization).
- It is aimed at:
  - Micro, Small and Medium size companies, certified electronically by IAPMEI – maximum of €75 million for Micro and Small Companies and € 120,5 million for Medium Size companies.
  - *Small Mid Cap* and *Mid Cap*, as defined in Decree Law 81/2017, of 30th June – maximum of €4,5 million \*;

*\* In accordance with Decree Law 81/2017, of 30th June:*

*A Mid Cap company is one which, not being a micro, small or medium size company, employs less than 3000 people.*

*A Small Mid Cap is one that employs less than 500 people.*

## Who is eligible for the COVID Credit Line – Tourism (Travel Agency, Tourist Entertainment and Event Organization)?

- The conditions for eligibility are as follows:
  - Head Office in Portugal;
  - Their activity code must be within the defined list;
  - No issues with the finance sector or the Mutual guarantee System;
  - No debts with the Tax Authorities, Social Security as at 1st March 2020, and a declaration to that effect should be presented and with the regularisation of any debts incurred in March 2020, by 30th April;
  - Positive balance in the last approved Accounts or interim Accounts, up until the date of application.
  - Cannot be in a difficult economic situation as at 31st December 2019, as defined by number 18 of article 2 of EC Regulation 651/2014, of 17th June;
  - A declaration must be submitted, assuming one of two situations:
    - The commitment to maintain the employees until 30th June 2020, at the same level as at 1st February 2020, and cannot terminate the employment contracts by way of collective dismissal or extinction of workpost, or
    - That they are subject to layoff, showing the approval by the Social Security.

**Please note that you should confirm the documentation with your bank.**



## What are the Conditions for the COVID Credit Line – Tourism (Travel Agency, Tourist Entertainment and Event Organization)?

- The general conditions are as follows:
  - Maximum Financing per Company:
    - Micro Companies – € 50.000
    - Small companies - € 500.000
    - Medium, Small Mid Cap and Mid Cap - € 1.500.000
  - Repayment of Capital: Equal successive monthly installments.
  - Maximum duration: Up to 6 years.
  - Grace Period for Capital: Up to 18 months.
  - Interest Rate: flexible and variable.
  - Interest Rate Subsidy: 0%.
  - Spread: 1% -1,5%.
  - Mutual Guarantee:
    - Up to 90%, for Micro and Small Companies;
    - Up to 80%, For Medium, Small Mid Cap and Mid Cap.
  - The commission will vary in accordance with the type of company and the deadline for the operation.

Companies should contact the banks to obtain further information on this Credit Line and information on how to register for it.

## What is the **COVID Credit Line – Tourism (Developments and Accommodation)?**

- A credit line with € 900 million, to support companies in the Tourism Sector (Developments and Accommodation).
- It is aimed at Micro, Small and Medium Companies, certified electronically by IAPMEI. There is a maximum amount of € 300 million for Micro and Small companies and € 600 million for Medium, *Small Mid Cap* and *Mid Cap*.
- The conditions for eligibility of the companies are the same as for the COVID Credit Line – Tourism (Travel Agency, Tourist Entertainment and Event Organization) except for the activity codes. However, you should confirm the documentation required with the bank.



## What are the conditions of the COVID Credit Line – Tourism (Developments and Accommodation)?

- The general conditions are as follows:
  - Maximum Financing per Company:
    - Micro Companies – € 50.000
    - Small companies - € 500.000
    - Medium, Small Mid Cap and Mid Cap - € 1.500.000
  - Repayment of Capital: Equal successive monthly installments.
  - Maximum duration: Up to 6 years.
  - Grace Period for Capital: Up to 18 months.
  - Interest Rate: flexible and variable.
  - Interest Rate Subsidy: 0%.
  - Mutual Guarantee:
    - Up to 90%, for Micro and Small Companies;
    - Up to 80%, For Medium, Small Mid Cap and Mid Cap.
  - The commission will vary in accordance with the type of company and the deadline for the operation.

Companies should contact the banks to obtain further information on this Credit Line and information on how to register for it.

## What is the COVID credit line - Restaurants?

- This credit line has € 600 million, to support companies in the restaurant sector.
- It is aimed at Micro, Small and Medium Companies, certified electronically by IAPMEI. There is a maximum amount of € 270 million for Micro and Small companies and € 321 million for Medium and *Small Mid Cap* and €9 million for *Mid Cap*.
- The conditions for eligibility of the companies are the same as for the COVID Credit Line – Tourism (Travel Agency, Tourist Entertainment and Event Organization), except for the activity codes. You should confirm the documentation with your bank,

## What are the conditions for the is the COVID credit line - Restaurants?

- The general conditions are as follows:
  - Maximum Financing per Company:
    - Micro Companies – € 50.000
    - Small companies - € 500.000
    - Medium, Small Mid Cap and Mid Cap - € 1.500.000
  - Repayment of Capital: Equal successive monthly installments.
  - Maximum duration: Up to 6 years.
  - Grace Period for Capital: Up to 18 months.
  - Interest Rate: flexible and variable.
  - Interest Rate Subsidy: 0%.
  - Spread: 1% -1,5%.
  - Mutual Guarantee:
    - Up to 90%, for Micro and Small Companies;
    - Up to 80%, For Medium, Small Mid Cap and Mid Cap.
  - The commission will vary in accordance with the type of company and the deadline for the operation.

Companies should contact the banks to obtain further information on this Credit Line and information on how to register for it.



## What is the COVID Credit Line - Support for Economic Activity?

- This Credit Line was recently changed as it applied essentially to the industry and had an allocation of € 1,300 million euros, to support companies in the industry sectors.
- At this time, due to the cancellation of the Covid Credit Lines - Working Capital and Treasury, this Credit Line has been adapted and now has an allocation of € 4,500 million, with the list of eligible companies also being extended to companies from sectors other than industry, of which we highlight the following:
  - Electricity, gas, steam, hot and cold water and cold air;
  - Water collection, treatment and distribution; sanitation, waste management and depollution;
  - Construction;
  - Wholesale and retail trade; repair of motor vehicles and motorcycles;
  - Real Estate Activities;
  - Education;
  - Consulting, scientific, technical and similar activities;
  - Transport;
  - Human health and social support activities;
  - Artistic, show, sports and recreational activities;
  - Information and communication activities.

## What is the COVID Credit Line - Support for Economic Activity?

- This line is intended for Micro, Small and Medium Enterprises (SMEs), certified by the IAPMEI, I.P. Individual Entrepreneurs (ENI), with and without organized accounting, with SME Certification and Small Mid Cap and Mid Cap Companies.
- Eligibility conditions for companies: they are the same as those mentioned above in relation to the COVID Credit Line - Tourism (Travel Agencies, Tourist Entertainment and Event Organization), with the exception of activity codes. However, please confirm the documentation with your bank.

## What are the conditions for the is the COVID credit line - Industry?

- The general conditions are as follows:
  - Maximum Financing per Company:
    - Micro Companies – € 50.000
    - Small companies - € 500.000
    - Medium, Small Mid Cap and Mid Cap - € 1.500.000
  - Repayment of Capital: Equal successive monthly installments.
  - Maximum duration: Up to 6 years.
  - Grace Period for Capital: Up to 18 months.
  - Interest Rate: flexible and variable.
  - Interest Rate Subsidy: 0%.
  - Spread: 1% -1,5%.
  - Mutual Guarantee:
    - Up to 90%, for Micro and Small Companies;
    - Up to 80%, For Medium, Small Mid Cap and Mid Cap.
  - The commission will vary in accordance with the type of company and the deadline for the operation.

Companies should contact the banks to obtain further information on this Credit Line and information on how to register for it.



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# CONSUMER RIGHTS



## **Which measures were implemented in relation to payments made by consumers?**

- Any commission for payment made on automatic payment terminals has been suspended;
- Any increase on the variable component of commissions, as well as fixed commissions that have not been suspended under the terms of the law, for the use of automatic payment terminals with card, has been prohibited;
- Prohibition of any fixed or variable commission associated with payments made by card on automatic payment terminals.

The breach of these obligations is punishable with a fine that can vary between €3.000 and €1.500.000 or €1.000 and €500.000, depending on whether it is an individual or a company.

## **Is it possible to refuse or limit the use of cards by the consumers for payment?**

The entities that provide payment by way of automatic payment terminals cannot refuse or limit the acceptance of cards, for payment of any goods or services, independently of the value of the transaction, during this period. Any breach is punishable with a fine that can vary between €250 and €3.740, for individuals, and € 3.000 to € 44.891, for companies.





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