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COVID-19: Support for companies

Newsletter | Portugal

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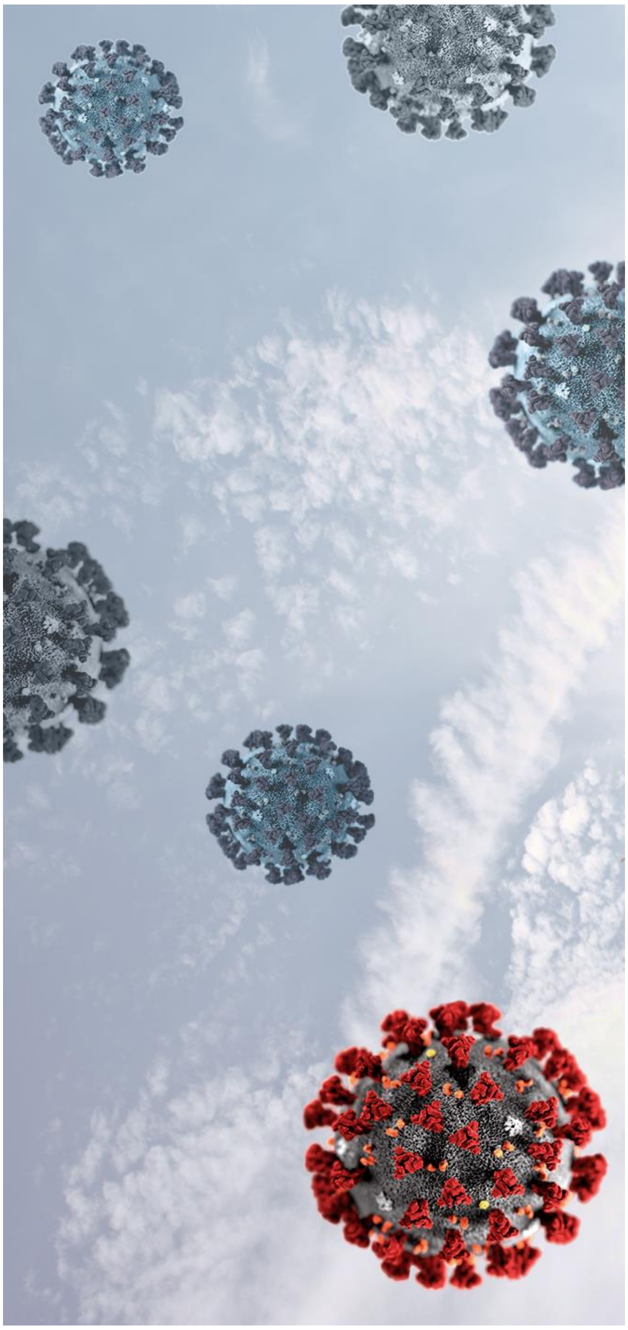

Exceptional measures implemented by the Portuguese government to support companies:

- **Credit lines**
- **Moratorium**
- **State guarantees**
- **Mutual guarantee company guarantees**

I. Credit lines

To mitigate the economic impact of the COVID-19 pandemic, the Portuguese government implemented, from the start of the pandemic and even before the declaration of the state of emergency, a package of temporary and exceptional measures to support companies. They include establishing several credit lines for businesses and adjusting existing incentive schemes and systems.

Adjustments to QREN and "Portugal 2020" incentive schemes and systems

Resolution of the Council of Ministers 10-A/2020 of March 13, as amended by Resolution of the Council of Ministers 11-A/2020 of March 23, redefines certain criteria regarding aid and incentives granted to companies under QREN and the "Portugal 2020" scheme, in particular:

- Shorter payment periods: Payments made as soon as possible after companies submit payment orders, which may be even made in advance and settled later with the clearance of the incentive to be paid by the intermediary or paying body, without the beneficiaries having to fulfill any formalities;
- Deferral of incentive repayment: 12-month deferral of the amounts payable until September 30, 2020 for reimbursable subsidies allocated under the QREN or the Portugal 2020 incentive scheme, without interest or any other penalty for the beneficiary companies;
- Eligibility of costs for canceled or rescheduled actions: Expenses incurred by beneficiaries in initiatives or actions canceled or rescheduled for reasons associated to COVID-19 as part of projects approved by Portugal 2020 or other operational schemes, in particular in the fields of internationalization and professional training, are eligible for reimbursement; and
- Consideration of COVID-19 as *force majeure* for Portugal 2020 aid: The negative impact of COVID-19 resulting in the insufficient materialization of actions or goals can be regarded as *force majeure*, i.e., not attributable to the beneficiaries, in the evaluation of the goals established by contracts under the Portugal 2020 incentive scheme.

Aid to export - Credit insurance increase

Also under Resolution of the Council of Ministers 10-A/2020 of March 13, the Portuguese government increased credit insurance for export with State guarantees to support export and customer diversification, in particular for non-European Union markets, in the following terms:

- From €100 to €200 million: for credit insurance line ceilings for the metallurgical, metal-mechanic, and mold sectors;

- From €100 to €200 million: for the bond insurance with State guarantees line for works abroad and other supplies; and
- From €250 to €300 million: for the credit insurance line ceiling for short-term export.

Credit line for micro-companies in the tourism sector

The Portuguese government, through Legislative Order 4/2020 of March 25, opened a credit line for € **60 million** for micro-companies in the tourism sector. These funds will be made available by the Portuguese Tourism Board.

This line is intended for companies that i) employ fewer than 10 workers and whose annual turnover or total annual balance sheet does not exceed €2 million; ii) can prove their regularized status to the tax authorities, the social security administration, and the Portuguese Tourism Board; iii) can prove that their activity was negatively affected by the COVID-19 outbreak; iv) are licensed and registered with the National Tourism Registry, if applicable; v) are not in financial difficulties; and vi) were not subject to administrative or judicial sanctions in the last two years for using labor legally required to pay taxes and Social Security contributions, undeclared under the rules that impose that obligation, or being the subject of a court ruling for illegal dismissal of pregnant workers or workers who had recently given birth or were breastfeeding.

The following criteria, among others, apply to this credit line:

- Amount to be made available to each enterprise: €750 per month for every position existing in the company on February 29, 2020, multiplied by the three-month period;
- Maximum amount: €20,000;
- Term: three months;
- Reimbursement: three years (including a one-year vesting period);
- No interest;
- Guarantee: the shareholder's personal guarantee; and
- The beneficiary must submit in July 2020 a document certifying that it is keeping the positions that existed on February 29, 2020.

Capitalizar 2018 – COVID-19 (*Closed line*)

As part of the Capitalizar 2018 Scheme, a specific “COVID-19” line for a **total of €400 million** was created, which remained in force until May 31, 2020.

This line, which included sectors not eligible for other credit lines already announced by the Portuguese government, gave priority to SMEs, but could also include other companies that have suffered the negative impact of the COVID-19 pandemic.

To be eligible for this credit line, companies should be up to date with their social security and tax obligations and the banks and have a positive net worth in their last approved balance sheet (or in the approved interim balance sheet up to the transaction date).

The following criteria, among others, applied to this credit line:

- Maximum amount per company: €3 million, respectively, with €1.5 million for operating fund and €1.5 million for cash purposes;
- Mutual guarantee (to be provided by the mutual guarantee companies): Up to 80% of the debt principal;
- Mutual counter-guarantee fund: 100%; and
- Operation term: four years for the operating fund and one to three years for cash.

COVID-19 Line to Support the Economy

Under the COVID-19 Line to Support the Economy, **four specific supplementary credit lines** were made available for approximately €6.2 billion in additional financing for the economy, to be made available through credit institutions and guaranteed by the State.

These lines are intended for Portuguese companies, from micro-companies to midcaps, in the following sectors:

- **Restaurants and similar businesses**: €600 million;
- **Travel agencies, tourist entertainment, event organization and similar businesses**: €200 million; (***closed line***)
- **Tourism companies**: €900 million; and
- **Economic activity**: €4.5 billion. (***closed line***)

To be eligible for these credit lines, companies in each sector must: **i)** have a positive net worth in the last approved balance sheet (or in the approved interim balance sheet up to the transaction date) or, regardless of their respective net worth, have started operation less than 12 months before the date of application; **ii)** be up to date with their social security and tax obligations; **iii)** have no incidents pending with the banks and the Mutual Guarantees System; and **iv)** agree to maintain permanent positions until December 31, 2020, in accordance with the number of permanent positions verified at February 1, 2020.

Regarding the criteria announced for these credit lines, we would highlight the following:

Restaurant and similar businesses; travel agencies; tourist entertainment; event organization and similar businesses:

Term of the credit line	Until December 31, 2020
Maximum amount per company	Micro-companies: €50,000 Small companies: €500,000 Medium companies, small mid and mid cap companies: €1.5 million
Mutual guarantee	Up to 90%
Mutual guarantee company counter-guarantee	100%
Operation term	Up to six years with an 18-month vesting period
Maximum spread	1.5%
Term for use	Up to 12 months
Scope	Financing of cash needs
Repayment	Equal, successive monthly payments in arrears

Tourism businesses and economic activity

Term of the credit line	Until December 31, 2020
Maximum amount per company	Micro-companies: €50,000 Small companies: €500,000 Medium companies: €1.5 million Small Mid Cap and Mid Cap: €2 million
Mutual guarantee	Up to 90%
Mutual guarantee company counter-guarantee	100%
Operation term	Up to six years with an 18-month vesting period
Maximum spread	1.5%
Term for use	Up to 12 months
Scope	Financing of cash needs
Repayment	Equal, successive monthly payments in arrears

Credit lines established in the Plan for Economic and Social Stabilization

Finally, with the flattening of the COVID-19 infection curve and the slow return to the "new normal," the Portuguese government issued a number of guidelines to restart the economy without losing control over the pandemic.

These guidelines were given in the Plan for Economic and Social Stabilization included in the Resolution of the Council of Ministers 41/2020 of June 6, in which the Portuguese government specified a set of interventions to guarantee gradual economic and social stabilization, without overlooking health care aspects.

We highlight the following important guidelines of the Plan for Economic and Social Stabilization:

- **Reinforcement of the volume of State guaranteed credit lines until the end of 2020 by €6.8 billion**

This reinforcement will make it possible to revitalize the public policy to promote financing criteria for companies through credit lines with a public guarantee, enabling: (i) the launch of credit lines with a public guarantee for a up to €1 billion intended to finance up to €50,000 for micro and small companies in all sectors; (ii) the continued availability of credit lines with a public guarantee, depending on the specific needs of the various activity sectors and the economy as a whole; (iii) the support to financing international transactions as part of the "COVID-19 lines to support the economy", allowing companies to have the liquidity criteria to handle demand from foreign customers.

- **Potential introduction of a credit insurance instrument intended for domestic activity, by the State, for the risk of transactions involving goods and services in Portugal**

This measure establishes shared risk by the export company, the insurance company, and the State. Its goal is to prevent Portuguese companies from losing domestic customers to external competitors due to the absence of national mechanisms. This instrument would require adjustment with respect to the respective domestic legal framework and would follow the European Union rules for State aid; thus, it would require the authorization of the European Union.

- **Creation of an SPV to acquire debt issued by PME, with the subsequent placing of that debt in the capital market by issuing bonds, with the possibility of associating a mutual guarantee**

This mechanism continues the ongoing project to issue a tourism bond, which brings together a number of tourism SMEs, but it does so through a mechanism, new in Portugal, to speed up the financing of SMEs through the capital market, mainly making use of institutional investors.

Sale and lease back transactions

Launching calls for €60 million as part of the real estate investment funds managed by Turismo Fundos-SGOIC S.A. for sale and lease back transactions, with the obligation of investing in modernization and energy efficiency or circular economy, with €40 million intended for tourism (50% associated with low-density territories) and €20 million intended for industry.

II. Moratorium, state guarantees, and mutual guarantee company guarantees – Decree-Law 10-N/2020, of March 26 and its amendments

Continuing the measures approved by Resolution of the Council of Ministers 10-A/2020 of March 13, the Portuguese government implemented, through Decree-Law 10-J/2020 of March 26, later amended by Law 8/2020 of April 8, a set of exceptional measures on credits for families, companies, private charities, and other social economy entities.

Although some credit institutions have implemented specific systems to lighten their customers' financial liabilities, the Portuguese government decided to establish a set of tools to reinforce the cash and liquidity of companies and families, so as to mitigate the effects of reduced economic activity.

This packet of measures took the form of three ways to help companies: i) a moratorium on compliance with obligations towards banks; ii) granting personal guarantees from the State; and iii) speeding up the granting of guarantees by mutual guarantee companies.

These measures were recently updated, as part of the approval of the Plan for Economic and Social Stabilization and through the publication of Decree-Law 26/2020 of June 16, which amended Decree-Law 10-J/2020 for the second time.

Once the critical stage of the health care emergency was over, it became possible to focus efforts on mitigating the economic and social consequences of the pandemic. The Portuguese government then set the goal of supporting families and companies and promoting the sustained return to economic activity, mainly through the interventions and mechanisms established in the Plan for Economic and Social Stabilization.

Regarding the measures introduced by Decree-Law 10-J/2020, the main guidelines for updating given in the Plan for Economic and Social Stabilization involve the extension of the moratorium to March 31, 2021, the expansion of the group of potential beneficiaries, and the extension of the scope of the credit transactions that could be subject to it.

We will now examine the measures established in Decree-Law 10-J/2020 and its recent amendments.

Beneficiaries of the exceptional measures approved by the government

Micro-companies, small, and medium companies can benefit from the measures established in Decree-Law 10-J/2020 of March 26, as well as any other company (regardless of its size) that is not part of the financial sector and meets the following cumulative criteria:

- They have their registered office and conduct their economic activity in Portugal;
- There were not, as of March 18, 2020, in default or breach of monetary obligations for more than 90 days, or, if so, did not meet the materiality criterion established in the Notice of the Bank of Portugal 2/2019 and Regulation (EU) 2018/1845 of the European Central Bank of November 21, 2018, and are not insolvent or in suspension or cessation of payments, or these procedures were on that date already being conducted by any of the institutions; and
- Are up to date with their tax, customs and social security obligations. Any debts incurred in March 2020 are not relevant for this purpose.

Individuals, regarding mortgage credits, as well as the financial lease of real estate properties for residential use and consumer credits for education (including academic and professional training), individual business owners, private charities, non-profit organizations, and other social economy entities can also benefit from these measures if they meet certain criteria.

Moratorium

Transactions included:

- Credit transactions granted by credit institutions, credit financial companies, investment firms, financial leasing companies, factoring companies and mutual guarantee companies, as well as branches of credit institutions and financial institutions operating in Portugal, to the beneficiaries specified above.

Transactions excluded:

- Credit or financing for the purchase of transferable securities or the acquisition of positions in other financial instruments, whether they are guaranteed by those instruments or not;
- Credit granted to the beneficiaries or systems, aid, or benefits, in particular fiscal ones, to establish their registered office or place of residence in Portugal, including for investment, with the exception of those citizens eligible for the Regressar Scheme;

- Credit granted to companies for individual use through credit cards by their members of the management and audit bodies, workers, and other partners.

<u>Implications of adherence to the moratorium in the contractual contents:</u>

- Total or partial prohibition until March 31, 2021 of credit lines contracted and loan grants (whether they have been made available or not) contracted by March 27, 2020;
- Extension, for a period equal to the term of the measure, of all the credits with payment of capital at the end of the contract, in force on March 27, 2020, together, under the same terms, with all their associated factors, including interest rates and guarantees;
- Suspension, regarding credits with partial repayment of capital or with partial maturity of other monetary cash benefits, until March 31, 2021, of payment of the capital, rent, and interest with maturity scheduled until the end of that period, even if the beneficiaries are entitled to request, at any time, that only the repayment of capital or part of it be suspended;
- As a result of the provisions of the previous paragraph, the automatic extension of the contractual plan for the repayment of capital, rent, interest, commissions, and other charges for the same period as the suspension, to guarantee that there are no further charges other than those derived from the variability in the benchmark interest rate underlying the contract; and
- Extension of all the elements associated with the contracts falling under the measure, including guarantees (with no need for further formality or act with institutions promoting the respective registration, when required, with no need to submit any other document and with exemption from the chain of successive transactions).

<u>Implications of the contractual effects and exercise of rights in insolvency proceedings, PER or RERE</u>

The extension of payment deadlines does not give rise to any:

- breach of contract;
- activation of early maturity clauses;
- suspension of the maturity of the interest due during the extension period, which will be capitalized at the value of the loan, depending on the time when they are due at the contract rate in force; or
- inefficacy or cessation of the guarantees granted by the beneficiaries or by third parties.

If the beneficiary is declared insolvent or submits to PER or RER, the lending banks may exercise all the actions associated to their rights under the applicable legislation.

The credit moratorium may trigger payment of the due tax, subject to a case-by-case analysis.

Specificities of some credits:

- Credits with financial collateral: the measures include the debtor's obligations to restore the maintenance margins, as well as the creditor's right to enforce the stop losses clauses.
- Loans granted based on (total or partial) financing or guarantees from third parties that have their registered office in Portugal: the moratorium applies automatically, with no need for previous authorization from those entities, on the same terms as for the initial legal business.

Procedure for access:

- Companies that intend to benefit from the moratorium must send to the lending bank, by mail or by email, a declaration of adherence signed by their legal representatives, together with supporting documents that certify their regular tax and social security status;
- If they meet the criteria set by the measure, the lending bank will apply the moratorium within a maximum of five business days from receiving the declaration and the supporting documents certifying the regular tax and social security status, effective from the date of delivery of the declaration.

Personal guarantees provided by the State

Decree-Law 10-J/2020 of March 26 also established that, due to the national economic emergency caused by the COVID-19 pandemic, and within the maximum limits for granting personal guarantees established in the State Budget, the State and other public organizations can offer personal guarantees, in particular to guarantee credit transactions and other financial transactions, to ensure liquidity, or for any other purpose, to companies, private charities, non-profit organizations, and other social economy entities, as well as to any other entities in the European Union, including European institutions, instruments, or mechanisms, if authorized by the Minister of Finance.

Guarantees provided by mutual guarantee companies

Under Decree-Law 10-J/2020 of March 26, mutual guarantee companies may, as part of the exceptional and temporary measures to respond to the epidemiological situation caused by the novel coronavirus, grant guarantees to beneficiaries and individuals or legal persons that are not shareholders, if those guarantees are specifically authorized by the members of the government in charge of economy and finances, and if the financial products resulting from those guarantees are identified.

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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our taskforce by email TFcoronavirusPT@cuatrecasas.com or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our website.

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