

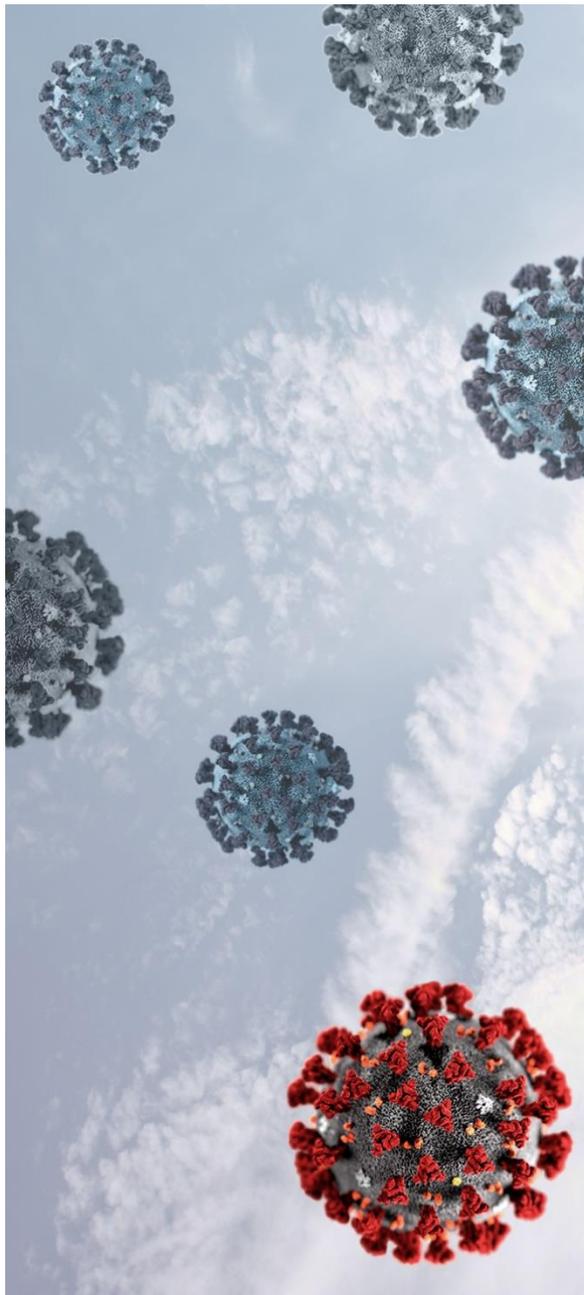
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# COVID-19: Corporate Governance

Newsletter | Portugal

March 30, 2020

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## **Impact of the COVID-19 pandemic on commercial companies and corporate governance**

- **Duties and responsibilities of management bodies**
- **General shareholders meetings of commercial companies**
- **Distribution of profits**



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## Impact of the COVID-19 pandemic on commercial companies and corporate governance

The global public health emergency caused by the COVID-19, which the World Health Organization classified as a pandemic on March 11, 2020, led to Portugal declaring a state of alert on March 13 and a state of emergency on March 18.

To contain the spread of the virus, the government and the Portuguese Parliament approved several extraordinary and urgent measures that have affected the lives of citizens and the commercial activities of companies.

Directors and managers of commercial companies are concerned about the effects these measures are having on business activity.

In this newsletter, we address the following questions:

- What are the special duties and responsibilities of commercial companies' management bodies during the COVID-19 crisis?
- How does the COVID-19 outbreak affect commercial companies' general shareholders meetings?
- How do I hold an ordinary general shareholders meeting that was scheduled for a date close to the end of March 2020?
- Are there any restrictions on how to distribute profits during this period?

### Duties and responsibilities of management bodies

Commercial companies' management bodies are subject to special duties of care and can even be held civilly or criminally liable for their acts or omissions.

During the pandemic, commercial companies' management bodies must mitigate the effects of the COVID-19 outbreak by implementing measures with diligence and careful management.

Management bodies should discuss and consider these measures carefully, and they should document them appropriately.

To maintain their activity and to guarantee the safety of workers, shareholders, suppliers, customers, and other stakeholders, companies must follow the health authorities' guidelines by applying hygiene, health and safety measures rigorously.

To reduce the negative impact the pandemic may have on the company's day-to-day management and turnover, companies should monitor their supply and distribution chains closely.



Companies should also analyze the contracts they have entered, particularly those that could be breached because of the COVID-19 outbreak.

Companies should analyze the adoption of extraordinary and temporary economic measures, such as (i) extending deadlines to comply with tax obligations; (ii) accessing financial support, if possible; and (iii) taking human resource management measures, considering their advantages and disadvantages, and confirming that they meet legal requirements

Companies should also analyze the insurance contracts for their activity, as well as life, health, work, and travel accident insurance to check whether the COVID-19 pandemic is covered. They should also verify any possible exclusions (e.g., employees teleworking).

### General shareholders meetings of commercial companies

Under Decree-Law 10-A/2020, of March 13, commercial companies, associations and cooperatives have until June 30, 2020, to hold statutory general meetings. This measure is in line with the extended deadlines for tax filing announced on March 9 (see our newsletter on this topic [here](#)).

If a company has already called a general shareholders meeting, it must consider whether it needs to cancel the call or postpone the meeting. In all cases, companies must substantiate their decision and inform the shareholders and other members of the governing bodies.

Under article 5 of Law 1-A/2020, of March 19, the regular functioning of the body is not impeded if members of the collegiate bodies of public or private entities participate in meetings by video or teleconferencing, particularly regarding quorum and deliberations. However, the participation method must be noted down in the meeting minutes.

To protect participants' health and safety, exercising the right to vote by mail or by unanimous written resolution is an alternative.

To conclude, under Decree-Law 10-A/2020 and Law 1-A/2020, companies have until June 30, 2020, to approve their annual accounts. To do this, companies can use video or teleconferencing resources for general shareholders meetings, provided the company details the participation method of each member of the board of directors or the general shareholders meeting in the minutes. Currently, the deadline for companies to submit their annual accounts through the Simplified Business Information is July 15, 2020.

### Distribution of profits

To maintain jobs and mitigate business crises, Decree-Law 10-G/2020, of March 26, approved extraordinary and temporary measures aimed at employers affected by the COVID-19 pandemic. Decree-Law 10-G/2020 clarified and extended the measures established in Order



71-A/2020, of March 15, establishing a “new simplified layoff measure” (see our newsletter on this topic [here](#)).

Article 14 of Decree-Law 10-G/2020 establishes the sanction applicable to employers or employees that do not comply with the obligations relating to the financial support established in the decree-law. This sanction consists of (i) the immediate withdrawal of the financial support, and (ii) the obligation to refund or pay, in part or in full, the received or exempted amounts to ISS, I.P. and IEFP, I.P., respectively. An administrative fine could also be imposed.

While the obligations arising from the granting of financial support are in force, companies benefiting from the regime established in Decree-Law 10-G/2020 cannot distribute profits in any form, and even withdrawal on account is forbidden. Otherwise, the above sanctions could be applied.



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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](mailto: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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