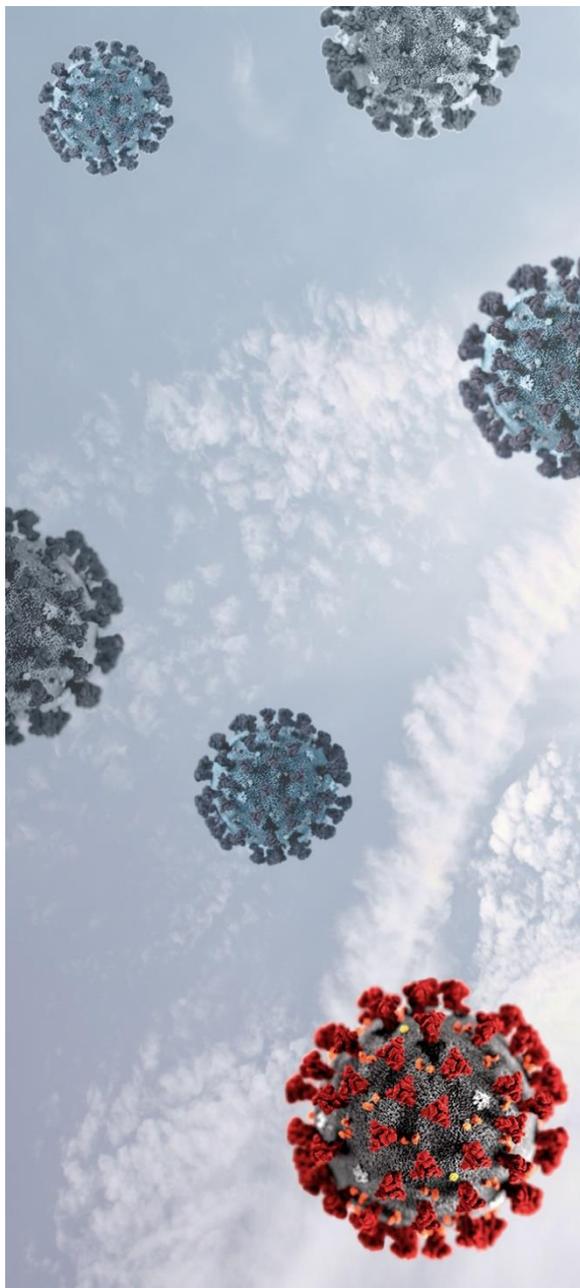

COVID-19: Measures affecting administrative matters

Newsletter | Portugal

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Exceptional and temporary measures adopted relating to administrative matters (update)

- Time periods and procedures
- Public procurement
- Financial rebalancing of long-term contracts
- Exceptional regime on strict civil liability
- Validity of licenses, authorizations, and other administrative acts
- Local authorities and inter-municipal entities



Exceptional and temporary measures in response to the pandemic caused by the novel coronavirus

In response to the COVID-19 pandemic, various measures have been approved that are affecting the processes and procedures carried out by government entities and the relationships between those entities and private parties.

Several new laws on this subject require a combined analysis:

- **Decree Law 10-A/2020 of March 13**, establishing exceptional and temporary measures related to the COVID-19 pandemic caused by the novel coronavirus, amended with respect to the issues discussed here by **Law 4-A/2020 of April 6**, **Decree Law 18/2020 of April 23**, **Decree-Law 22/2020 of May 16** and **Law 16/2020 of May 29**.
- **Presidential Decree 14-A/2020 of March 18**, declaring a state of emergency based on a public disaster situation, renewed by **Presidential Decree 17-A/2020 of April 2** and **Presidential Decree 20-A/2020 of April 17**.
- **Law 1-A/2020 of March 19**, ratifying the effects of Decree Law 10-A/2020 of March 13 and establishing new exceptional and temporary measures in response to the pandemic caused by the novel coronavirus, amended, for this purpose, by **Law 4-A/2020 of April 6** and **Law 16/2020 of May 29**.
- **Decree 2-A/2020 of March 20**, regulating the declaration of a state of emergency following Presidential Decree 14-A/2020 of March 18 (repealed and replaced by **Decree 2-B/2020 of April 2**), in turn revoked and replaced by **Decree 2-C/2020 of April 17**.
- **Decree Law 10-E/2020 of March 24**, establishing an exceptional regime for authorizing spending in response to the COVID-19 pandemic, and making the first amendment to Decree Law 10-A/2020 of March 13.
- **Decree Law 10-I/2020 of March 26**, establishing exceptional and temporary measures in response to the COVID-19 pandemic in the cultural and artistic areas, especially relating to canceled shows, amended by **Law 7/2020 of April 10** (rectified by Rectifying Statement 18/2020 of April 30, 2020).
- **Law 4-A/2020 of April 6**, producing the first amendment to Act 1-A/2020 of March 19 and the second amendment to Decree Law 10-A/2020 of March 13.
- **Law 4-B/2020 of April 6**, establishing an exceptional regime to comply with the measures established under the Municipal Allowance Programs and debt programs for local governments, in the context of the COVID-19 pandemic, and making the second amendment to Act 1-A/2020 of March 19.
- **Decree Law 14-A/2020 of April 7**, modifying the time periods to implement electronic billing for public contracts.



- **Decree Law 14-B/2020 of April 7**, establishing exceptional temporary measures in response to the COVID-19 pandemic in the context of national water supply and sewage systems.
- **Law 6/2020 of April 10**, approving an exceptional regime promoting the response capacity of local authorities in the context of the COVID-19 pandemic.
- **Decree Law 19-A/2020 of April 30**, establishing an exceptional temporary regime on financial rebalancing of long-term contracts in the context of the COVID-19 pandemic.

We will now review the most significant measures, specifically i) those regulating proceedings in progress in the administrative courts; ii) public procurement procedures and the respective pre-contractual disputes; iii) the more recent exceptional temporary rules on financial rebalancing for long-term contracts; and iv) the exceptional regime on the central government's strict civil liability. We also discuss measures on the validity of licenses, authorizations and other administrative acts and the extraordinary rules established for local authorities and inter-municipal entities' procedures.

TIME PERIODS AND PROCEDURES

I. Non-urgent administrative procedures

Regarding **administrative time periods granted to private parties to carry out acts relating to procedures considered non-urgent**, the wording Act 4-A/2020 gives to section 7 of Act 1-A/2020, particularly the provisions of sections 7.1 and 7.9, clarifies that the legal rule is that **all procedural time periods have been suspended beginning on March 9, 2020**.

The first version of the above act established the general suspension of administrative and tax-related time periods *“that run in favor of the private parties.”* However, the use of that unusual expression, which is not clarified in the Law, led to significant uncertainties regarding its interpretation, and it has now been replaced.

An exception exists in the new version of section 7 for public procurement procedures, which require a special provision. This is now found in section 7-A, which has been added to Law 1-A/2020. This new section will be discussed in further detail under the next heading.

The suspension now generally imposed is **relative**. In other words, if an act can be carried out electronically or via remote communication **and if all parties involved** consider that they have the conditions available to do so appropriately, **the procedures can still be carried out**.

The rule on suspension of time periods will also apply *mutatis mutandis* to the following procedures:

- Procedures carried out at notary offices and public registries.
- Procedures addressing misconduct, or for imposing sanctions or disciplinary actions, including acts for judicial challenging of final or interlocutory decisions or resolutions, when taking place in the context of direct, indirect, regional, or local government services, as well as those carried out by any other administrative entities, namely independent administrative bodies such as the Portuguese Competition Authority (*Autoridade da Concorrência*), the Portuguese Insurance and



Pension Fund Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*), the Bank of Portugal, and the Portuguese Securities and Exchange Commission (*Comissão do Mercado de Valores Mobiliários*).

The time periods used to establish tacit approval are also suspended, both in the case of authorizations or licenses applied for by private parties and in the context of environmental impact evaluations. The limitation periods and expiration deadlines for all types of processes and procedures are also suspended.

II. Urgent administrative procedures

The legal rules established for urgent judicial proceedings will apply *mutatis mutandis* to procedures considered urgent. After being suspended on March 9, 2020, those procedures and respective time periods will start to run again from April 7, 2020, without suspension or interruption of time periods, acts, or procedures. Regarding procedures usually carried out in person, the following rules will apply:

- Procedures that require the physical presence of the parties or their representatives, or of any other parties involved, will take place using the appropriate means of remote communication, such as teleconferencing, video calls, or other equivalent means.
- If it is not possible to carry out procedures that require the physical presence of the parties or their representatives, or of other parties involved in the procedure, using some means of remote communication, and when the lives, physical integrity, mental health, liberty, or immediate livelihood of those involved would be put at risk, those procedures may be carried out through appearances in person, provided this does not entail participation by a number of persons greater than that established in the recommendations from the health care authorities, and only in compliance with the competent supervisory bodies' guidelines.
- If these requirements cannot be met, the procedure must be suspended.

Law 1-A/2020 **expressly establishes the following as urgent procedures**, meaning that they will continue to take place without suspension or interruption of time periods:

- Processes and procedures to defend rights, liberties, and guarantees that are being prejudiced or that could be prejudiced by any unconstitutional or unlawful measure or ruling (*as established under section 6 of the Regime on the State of Siege and State of Emergency, as contained in Law 44/86 of September 30*).
- Procedures, acts, and proceedings that are necessary to prevent irreparable harm or loss.

Regarding time periods that are not suspended and procedures that are continuing to move forward, the **exceptional regime on fair impediments, justification for inaction and postponement of procedures**, as established in section 14 of Decree Law 10-A/2020, will apply to them if necessary and provided there are reasons to justify it.



For those processes, if the facilities where the respective procedural acts are going to take place have been closed, or if attendance in person has been suspended, the time period to carry out the act in question will also be considered suspended as of the date of the closure or the suspension of attendance, with that suspension ending once those facilities are reopened by the competent public authority's decision.

III. Non-urgent judicial proceedings

The original wording of section 7 of Law 1-A/2020 presented numerous difficulties for its application and gave rise to inconsistent interpretations, particularly regarding which processes and time periods did or did not have to be considered suspended in relation to acts carried out with private parties. There was also confusion about when any such suspension had to be considered in the respective counting of the time periods.

Regarding the **time periods to carry out acts in judicial proceedings considered non-urgent**, the wording given to section 7.1 of Act 1-A/2020 by Law 4-A/2020 has clarified that the legal rule is that **all such time periods have been suspended since March 9, 2020**.

As such, all time periods to carry out acts, processes, and procedures in the context of processes and procedures carried out before the judicial, administrative, and tax courts; the Constitutional Court; the Court of Auditors; and all other courts, arbitral tribunals, the Public Ministry, justices of the peace, alternative dispute resolution bodies, and tax enforcement boards **will be suspended until this exceptional situation has ended**, on a date that will be defined via a decree law.

The suspension of limitation periods and expiration deadlines for all types of processes and procedures is being maintained.

In any case, to allow processes to continue under certain circumstances, the wording of the law that has now been approved expressly establishes that the **regime on suspension of all the time periods mentioned in section 7.1, as well as all those to which that provision applies through reference by other sections of the same act, will not prevent:**

- the continuation and performance of non-urgent processes and acts either with or without attendance in person, provided **all the parties** consider that the conditions are met to ensure that they can take place via computer platforms that allow them to take place electronically or by the appropriate means of remote communication, such as teleconferencing, video calls, and other equivalent means; or
- the issuance of a final decision or resolution in cases where a court (or any other entity) considers that there is no need to first carry out any new proceedings.

Law 4-A/2020 has established that the effects of these legal rules will be retroactive to begin on March 9, 2020.



IV. Urgent judicial proceedings

Any **urgent proceedings that were suspended beginning with the entry into effect of Decree Law 10-A/2020 will continue to be processed as from April 7, 2020, without the time periods, acts, or procedures being suspended or interrupted.**

Regarding the **procedures** that must be carried out, the following legal rules must be observed:

- Procedures that require the **physical presence of the parties** or their representatives, or of any other parties involved in the proceedings, will take place using the appropriate means of remote communication, such as teleconferencing, video calls, or other equivalent means.
- **If it is not possible** to carry out procedures that require the physical presence of the parties or their representatives, or of other parties involved in the proceedings, using some means of remote communication, and when the lives, physical integrity, mental health, liberty, or immediate livelihood of those involved would be put at risk, **those procedures may be carried out through appearance in person**, provided this does not entail participation by a number of persons greater than that established in the recommendations from the health care authorities, and only in compliance with the competent supervisory bodies' guidelines.
- **The regime on suspension will apply to urgent proceedings** in all cases where it is impossible for the acts or procedures that require the physical presence of the parties to take place in the manner described above, or where this cannot be adequately guaranteed.

Section 36 of the Portuguese Procedural Code for the Administrative Courts (*Código de Processo nos Tribunais Administrativos*) contains a list of the urgent procedures that take place in the Administrative and Taxation Courts, namely: i) **electoral disputes**; ii) **collective bargaining cases**; iii) **pre-contractual disputes** (which we will discuss below); iv) **subpoenas for presenting information, consulting documents, or issuing certificates**; v) **summonses to defend rights, liberties, and guarantees**; and vi) **interim measures**.

Given their nature, procedures involving **summonses to defend rights, liberties, and guarantees** and **interim measures** cannot be considered suspended at any time.

The current wording of that legal rule leaves no room for doubt about this; according to that text, **the following are considered urgent**:

- Processes and procedures to defend rights, liberties, and guarantees that are being prejudiced, or that could be prejudiced, by any unconstitutional or unlawful measure or ruling.
- Procedures, acts, and proceedings that are necessary to prevent irreparable harm or loss, particularly procedures related to at-risk minors, urgent procedures on educational guardianship, and proceedings and trials for jailed criminal suspects.

Law 4-A/2020 establishes that these legal rules will enter into effect on **April 7, 2020**.



V. End of the suspension of (almost all) judicial and procedural deadlines

The favorable evolution in the number of COVID-19 infections in Portugal has made it possible to lift the state of emergency and to start easing the restrictive measures in force, allowing a return to normal social life and economic activities, without forgetting the fight against the pandemic.

The Portuguese government approved a gradual strategy to lift the confinement measures, establishing a three-phase calendar under the system designed for the situation of calamity. Phase one started on May 4, 2020 and was later extended.

In late May, as phase two of the deconfinement came to a close, and the evolution of the epidemic remained under control, the Portuguese government found that the conditions were right for courts and administrative entities to go back to normal operation and to restart judicial proceedings and administrative procedures.

Law 16/2020 of May 29 was passed, lifting the suspension of deadlines for most legal actions and proceedings, while simultaneously establishing a transitional procedural system that regulates how these actions and proceedings must be conducted until the exceptional situation resulting from the epidemiological crisis comes to an end. Certain procedures and proceedings remain suspended, though.

We examined these issues in detail in our Newsletter COVID-19 End of the suspension of judicial and administrative deadlines of June 3, 2020, which can be read [here](#).

PUBLIC PROCUREMENT

I. Procedures for pre-contractual disputes

Law 4-A/2020 establishes the rule that urgent procedures are not being suspended, and it explicitly reaffirms this understanding relating to claims involving pre-contractual disputes, which are defined under sections 100 *et seq.* of the Portuguese Procedural Code for the Administrative Courts.

Consequently, counting of time periods for those actions is not being suspended, with that counting being reinitiated on April 7, 2020, with the understanding that it was suspended between March 9, 2020, and April 7, 2020.

II. General public procurement procedures

Regarding **procedures for public procurement**, including those established in the Portuguese Code on Public Procurement (*Código dos Contratos Públicos*), in contrast to the case for other administrative procedures, the related time periods **are not being suspended**, and any time periods for those procedures that were suspended beginning on March 9, 2020, will start to run again from April 7, 2020.



III. Exceptional public procurement procedures to confront the pandemic

Regarding public procurement procedures that must be initiated during this period by entities from the public-owned business sector and the administrative public sector, as well as by local authorities, for preventing, containing, mitigating, and addressing the COVID-19 pandemic, as well as for **reestablishing normality afterwards (and exclusively in those cases), an exceptional regime contained in Decree Law 10-A/2020 of March 13 has gone into effect with the following characteristics:**

- Recourse to direct procurement for reasons of **unavoidable urgency** is permissible, but it limited to what is strictly necessary to formalize contracts for (i) awarding public works projects; (ii) acquiring movable assets; (iii) renting or leasing; and (iv) acquiring services.
- The situations where it is permissible to make use of the simplified direct procurement regime are being expanded to include contracts for (i) acquiring movable assets; (ii) renting or leasing movable assets; and (iii) acquiring services, when the contract price does not exceed €20,000.
- Any procedures initiated under those conditions are exempt from the restrictions on designating contractors contained in sections 113.2 and 113.5 of the Code on Public Procurement. For example, (i) proposals can be requested from entities that have already been awarded contracts via the process for direct procurement or the process for consultation in advance during the same fiscal year or the two previous fiscal years and above the corresponding limits; and (ii) invitations for the process for direct procurement or process for consultation in advance can also be given to entities that have made donations to the awarding entity and that, for that reason, previously could not have received such invitations.
- Contracts formalized within the context of direct procurement, when based on this exceptional regime, **can produce effects after the awarding** (even before approval or a declaration of conformity has been received from the Court of Auditors), without prejudice to their publication.
- Public contracts formalized under this exceptional regime are also **exempt from being subject to auditing by the Court of Auditors in advance when this obligation would otherwise exist** (however, the contracts must still be sent to the Court of Auditors within 30 days after they have been formalized).
- The need for authorization documents **can be waived** (particularly the declarations demonstrating the absence of disqualifications and the documents confirming that the participant is not subject to disqualification), according to the new section 9 added by Law 4-A/2020, as well as for purposes of making payments; however, the contracting authority may request them at any time.
- The requirement to provide a guarantee can be waived, regardless of the contract price, under the new article 10 added by Law 4-A/2020.
- The simplified direct awarding procedure described in article 128 of the Public Procurement Code can be used, subject to the terms and limitations established in the new article 2-A that Decree Law 18/2020 has added to Decree Law 10-A/2020.



That **exceptional regime for simplified direct awarding** can be adopted “*to the extent strictly necessary, and for duly justified reasons of extreme urgency, regardless of the contract price and within the limits of the budget.*” This applies exclusively to contracts for acquiring equipment, goods and services necessary to prevent, contain, mitigate and treat SARS-CoV-2 transmission and COVID-19.

Some details worth emphasizing for contracts awarded under that simplified regime include, among others that (i) the procuring entity must notify the Ministry of Finance and the Ministry of Health about such contracts; and (ii) they must also be announced on the public procurement portal, with due justification for why that procedure was used.

Finally, we must mention that the new article 2-A goes into effect retroactively to March 13, and it is expressly stated that any procedures initiated before April 23 (the publication date of Decree Law 18/2020, which added that article 2-A) that have not fully or partially complied with the regime established by Decree Law 2-A/2020 (the exceptional public procurement regime described above) will be considered as taking place under that exceptional regime for simplified direct awarding.

IV. Public purchasing centers

By law, entities linked to the national public purchasing system can only acquire goods and services under the centralized framework agreement, except in cases where **authorization has first been obtained** allowing the acquisition of goods and services outside that agreement.

However, in the exceptional context established by Decree Law 10-A/2020, **linked entities will no longer be required to obtain said prior authorization**, and they will be able to acquire goods and services outside the centralized framework agreement to respond to the COVID-19 pandemic.

V. Public contracts to promote shows

Under Decree Law 10-I/2020 of March 26, the exceptional regime on public procurement described above also applies to contracts through which public entities promote shows.

Participating public entities are also authorized to refund payments they have received if a show has been canceled and rescheduling it is not possible.

The new wording of article 11 of Decree Law 10-I/2020, introduced by Law 2/2020, states that any public entities and public-law bodies promoting live performances must ensure the completion of public contract formation where (i) the contracting decision has already been issued, or (ii) the call for tenders has already been sent, but contracting has not yet occurred.

VI. Public contracts already in effect

To ensure that private contractors promptly comply with their contractual obligations, Decree Law 10-A/2020 also establishes that contracting entities must ensure that payments are made **promptly**.



In cases where the availability of goods and services to be provided by a contractor under this exceptional regime may be at risk, **payment in advance** is also permitted, waiving the need to comply with the requirements of section 292 of the Code on Public Procurement. This measure covers the contracts for public works; for rental, leasing, or acquiring movable assets; and for acquiring services covered by the exceptional regime of Decree Law 10-A/2010, as entered into by any awarding entity, and including contracts established by public entities that promote cultural and artistic shows.

VII. Electronic billing

Regarding the application of electronic billing to public contracts, the new Decree Law 14-A/2020, which amends section 9 of Decree Law 111-B/2017, allows contractors to use invoicing methods other than those described in section 299-B of the Code on Public Procurement, with the following time periods established for implementation:

- **June 30, 2021**, for **small and medium-sized enterprises**;
- **December 31, 2021**, for **microenterprises**; and
- **December 31, 2020**, for all other **enterprises**.

To adapt the law to this delayed application of electronic billing, Decree Law 14-A/2020 also introduces amendments to Decree Law 28/2019. Specifically, it establishes that the source of invoices and other documents relevant for taxation, and the integrity of their contents, will be presumed to be authentic whenever issued electronically and they bear an electronic signature recognized by the Portuguese government's shared public services entity ESPAP, I.P, provided that entity holds sufficient powers to issue the document on the taxpayer's behalf.

FINANCIAL REBALANCING OF LONG-TERM CONTRACTS

With Decree Law 19-A/2020 of April 30, the government approved an exceptional temporary regime that applies to long-term contracts where the central government or another public entity is a party.

Article 3 states that from April 3, 2020 until the state of emergency ends (i.e., 11:59 p.m. on May 2, 2020), the contractual clauses and legal provisions establishing the right to financial rebalancing or compensation for loss of use are suspended for any such contracts, including public-private partnership contracts (PPPC).

This means that private contractors cannot take advantage of events occurring during that period.

However, a few specific details are worth highlighting:

- For contracts that expressly grant the contractor or private partner the right to compensation for any loss of use, or that include a pandemic as grounds for requesting financial rebalancing, **that compensation or rebalancing can only take place by extending the service provision**



period or the term of the contract. Therefore, regardless of the legal or contractual provisions, there will be no **price revisions or duty for the procuring entity or public partner to compensate the other party.**

➤ **For road concession and sub-concession agreements:**

- The obligations of concessionaires and sub-concessionaires under their respective concession agreements **will be temporarily reduced or suspended**, based on urgent determination and itemization by the grantor of the concession or sub-concession (specifically in view of actual updated traffic levels and the minimum services still required to ensure adequate road safety).
- When the grantor of the concession or sub-concession is the one paying the concessionaire or sub-concessionaire, that party must also unilaterally determine the appropriate payment reduction, given the reduced or suspended obligations.

The regime applicable to PPPCs is unilaterally modified, with article 5 stating that **article 20 of Decree Law 111/2012** (governing the central government's involvement in PPPCs and creating the Project Monitoring Technical Unit) **does not apply** to any act, measure, decision, or other type of action, even if regulatory in nature, when attributable to the public partner, provided it is **adopted in the context of the pandemic**. However, Decree Law 111/2012 can be applied in a manner secondary to the new exceptional regime, provided it does not contradict it. That regime comes into effect on March 12, 2020, the approval date of Decree Law 10-A/2020.

Arbitral decisions in disputes arising from applying that legislation can be appealed to the Supreme Administrative Court, in the cases listed in article 185-A.3 of the Code of Administrative Court Procedure.

Finally, this legislation will no longer be in effect once the World Health Organization determines that the epidemic situation with SARS-CoV-2 and COVID-19 is no longer a pandemic (without prejudice to the effects that by their nature may continue).

EXCEPTIONAL REGIME ON STRICT CIVIL LIABILITY

Also, in Decree Law 19-A/2020 of April 30, the government included an exceptional temporary regime that applies to typical cases of strict civil liability, where compensation could potentially be payable for acts carried out in the public interest when performed by the central government or another public entity for preventing and fighting against the pandemic.

Damages will not be paid in such cases for harm or losses resulting from acts regularly performed by the central government or some other public entity in the exercise of the powers granted by the public health and civil protection legislation or in the context of the state of emergency for preventing and fighting against the COVID-19 pandemic, which is considered to be a cause of *force majeure*.



LICENSES, AUTHORIZATIONS, AND OTHER ADMINISTRATIVE ACTS

Under Decree 2-A/2020 of March 20 governing the first period of the state of emergency, **licenses, permits, and other types of administrative acts will remain valid**, even if they have expired. That same rule was also included in Decree 2-B/2020 and Decree 2-C/2020 governing the next two phases of the state of emergency.

This implies that licenses, authorizations, and other administrative acts expiring after March 22, 2020 (the date Decree 2-A/2020 entered into effect) are considered **valid** for as long as the state of emergency is in place.

With the end of the state of emergency and the declaration of the situation of calamity, parallel provisions were approved. Decree Law 22/2020 of May 16 established that any licenses and authorizations due to end after March 9 or in the previous 15 days would be accepted on the same terms until October 30, 2020.

LOCAL AUTHORITIES AND INTER-MUNICIPAL ENTITIES

I. Deliberations

Considering the needs related to the containment of the pandemic, Law 1-A/2020 also establishes measures related to ordinary meetings held by the decision-making and management bodies of **local authorities** and **inter-municipal entities** (e.g., for deliberations carried out by municipal assemblies or municipal councils), including the following:

- Meetings scheduled for April and May **can be held until June 30, 2020**.
- The obligation to hold meetings publicly is suspended until June 30, 2020 (although they can still be recorded and posted on the authority's website whenever this is technically viable).

Despite this suspension, holding meetings by **videoconferencing or another appropriate digital means** will be possible, provided the necessary technical conditions can be guaranteed.

II. Municipal Allowance Programs and debt programs

Law 1-B/2020, which entered into effect on March 12, 2020, establishes an exceptional regime to comply with the measures contained in Municipal Allowance Programs (PAMs) and debt programs, **relating to expenditures for social assistance, acquisition of health care equipment, and other measures for the fight against the pandemic**.

When the expenditures involved are to improve social assistance for residents affected by the COVID-19 outbreak, to provide social assistance for acquiring goods and services related to protecting public health, or for other measures used to fight the pandemic, **the following measures contracted under the Municipal Allowance Programs are suspended**:



- Analysis and proposal for revoking tax benefits and exemptions from fees, when the municipality is responsible for their granting, and abstention from granting of benefits during the PAM, unless the Municipal Aid Fund (FAM) authorizes it after the economic advantages for the municipality have been justified (*section 35(d) of Law 53/2014, in its current version*).
- Establishing prices charged by the municipality in the areas of sewage, water, and waste management, under the terms defined in the recommendations of the regulatory body for water and waste services, including the possibility of establishing subsidized rates (*section 35(e) of Law 53/2014, in its current version*).
- Identifying and quantifying the new municipal fee schedules and taxes that will be put into effect, including for apportionments, taxes, and rates of surplus value (*section 35(f) of Law 53/2014, in its current version*).
- Specific, quantified measures aimed at improving processes and monitoring events susceptible to generating the collection of taxes and municipal fees, as well as imposing fines and encouraging procedures for enforcing municipal tax collection (*section 35(i) of Law 53/2014, in its current version*).
- Limiting current expenses, including a detailed, quantified plan to reduce expenses for personnel and acquisition of goods and services (*section 35(k) of Law 53/2014, in its current version*).
- Measures to rationalize expenses for personnel, including those related to the payment of overtime hours and the production of mutually agreed contractual termination programs (*section 35(l) of Law 53/2014, in its current version*).

As such, during this exceptional period, and within the limits mentioned above, those measures will no longer be binding or limiting.

Financial liability is also waived for failure to comply with the debt limit under section 52.1 of Law 73/2013, whenever that debt is taken on to (i) cover spending aimed at providing social assistance for residents affected by the COVID-19 outbreak; (ii) acquire goods and services related to protecting public health; or (iii) carry out any other measures aimed at mitigating the effects of the COVID-19 pandemic.

However, the Directorate-General on Local Authorities must be notified of the amount used to apply those measures, within a three-month period, which starts from the date on which Law 1-B/2020 is no longer effective.

That act also contains a **rule for interpreting section 128.10 of the State Budgets for 2020**, as approved by Law 2/2020 of March 31, according to which local authorities that, as of December 31, 2019, have entered in their accounting records the debts subject to adjustment agreements to be established in 2020, may be authorized, on an exceptional basis and by order of the members of the central government responsible for the areas of finance, local authorities, environment, and climate action, to exceed the **debt limit established under section 52.1 of Law 73/2013**.



That act introduces amendments to Law 1-A/2020 by adding two sections, namely section 3-A and section 3-B. Under the new section 3-A, the balance sheet for the bodies of the local authorities can be prepared as soon as the income and expenditure account is approved by the executive body or the cash flow statement is approved (as established in section 129 of the State Budgets for 2020).

Under section 3-B, during 2020, local authorities may transfer one-twelfth of the share they receive from the central government's tax revenues. To do this, the local authority must submit a request to the Directorate-General on Local Authorities at the end of the month before the one in which it wants to transfer one-twelfth of the share.

III. Exceptional regime to promote the response capacity of local authorities

Law 6/2020 of April 10 approved an exceptional regime to promote the response capacity of local authorities in the context of the COVID-19 pandemic. We highlight some of these measures:

- Municipal councils will be authorized to recognize the right to exemption, under article 16 of Law 73/2013, in conformity with the regulations approved by the municipal assembly. However, this will not apply in exceptional situations that are duly justified and directly related to measures on the fight against the pandemic, where **approval of the regulation by the municipal assembly will not be required**. Nevertheless, in those cases:
 - The full or partial exemption cannot extend beyond the end of the calendar year in progress.
 - The exemption will not cover any tax imposed under Law 73/2013.
 - Exemptions must be electronically notified to the municipal assembly within 48 hours.
- In exceptional situations that are duly justified and directly related to unavoidable spending for the fight against the pandemic, municipal councils can apply for loans without the need for authorization from the municipal assembly but subject to (i) ratification by that assembly as soon as it is able to meet, and (ii) articles 49.5 and 50.2 of Law 73/2013.
 - The municipal assembly must be electronically notified about the loans within 48 hours.
- Authority to grant aid to vulnerable persons, as described in article 33.1(v) of Law 75/2013, will be considered as legally delegated to the chair of the municipal council when such aid is associated with the fight against the pandemic.
- To determine their available funds, entities from the local government subsector are not subject to the limits on allocation of their own effective income, as established in article 3(iv)(f) of Law 8/2012 of February 21.
 - Application of article 8 of Law 8/2012 and article 107.2 of Law 2/2020 is suspended.



- Also, to determine available funds, those entities only need to consider the commitments with scheduled or defined payment dates falling within the period for calculating those funds (similar to the procedure for established and ongoing expenses and for loans).
- The period for using capital from medium and long-term loans (a maximum of two years under article 51.10 of Law 73/2013) is suspended.
 - For **new loans**, the purpose described in article 51.1 of Law 73/2013 also applies to spending dedicated to fighting the effects of the COVID-19 pandemic, with no need for authorization by the municipal assembly (although subject to its ratification once it is able to meet).
- Application is suspended during 2020 of article 40.2 of Law 73/2013 of September 3, which states in its current wording that *“the gross current revenues collected must be at least equal to the current expenses plus the average payments made on medium and long-term loans.”*
- The councils of the sub-municipalities are responsible for accepting donations of movable property to assist with executing exceptional temporary measures to prevent, contain, mitigate and treat SARS-CoV-2 transmission and COVID-19, and to support the response to their social consequences.

That regime takes effect retroactively from March 12.

IV. Local authorities, municipal services, inter-municipal services, and municipal and inter-municipal companies providing water and sewage system services.

During this exceptional period, Decree Law 14-B/2020 was approved. Two of its fundamental measures worth highlighting apply to debts by local authorities, municipal services, inter-municipal services, and municipal and inter-municipal companies providing water and sewage services:

- Partial deferment, until a date after **September 30, 2020**, of enforcement of the debt adjustment agreements produced under Decree Law 5/2019 of January 14.
- Extension **until September 30, 2020** of the period for assigning receivables for entities managing multi-municipal systems or other central government water supply and sewage systems, and for entities managing associations between the central government and local authorities under Decree Law 90/2009 of April 9.

These measures go into effect on April 1, 2020.



Contact

Cuatrecasas, Gonçalves Pereira & Associados,
Sociedade de Advogados, SP, RL
Professional limited liability company (*Sociedade profissional de responsabilidade limitada*)

Lisbon

Praça Marquês de Pombal, 2 (y 1-8.º) | 1250-160 Lisbon | Portugal
Tel. (351) 21 355 3800 | Fax (351) 21 353 2362
cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

Oporto

Avenida da Boavista, 3265 - 5.1 | 4100-137 Oporto | Portugal
Tel. (351) 22 616 6920 | Fax (351) 22 616 6949
cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

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