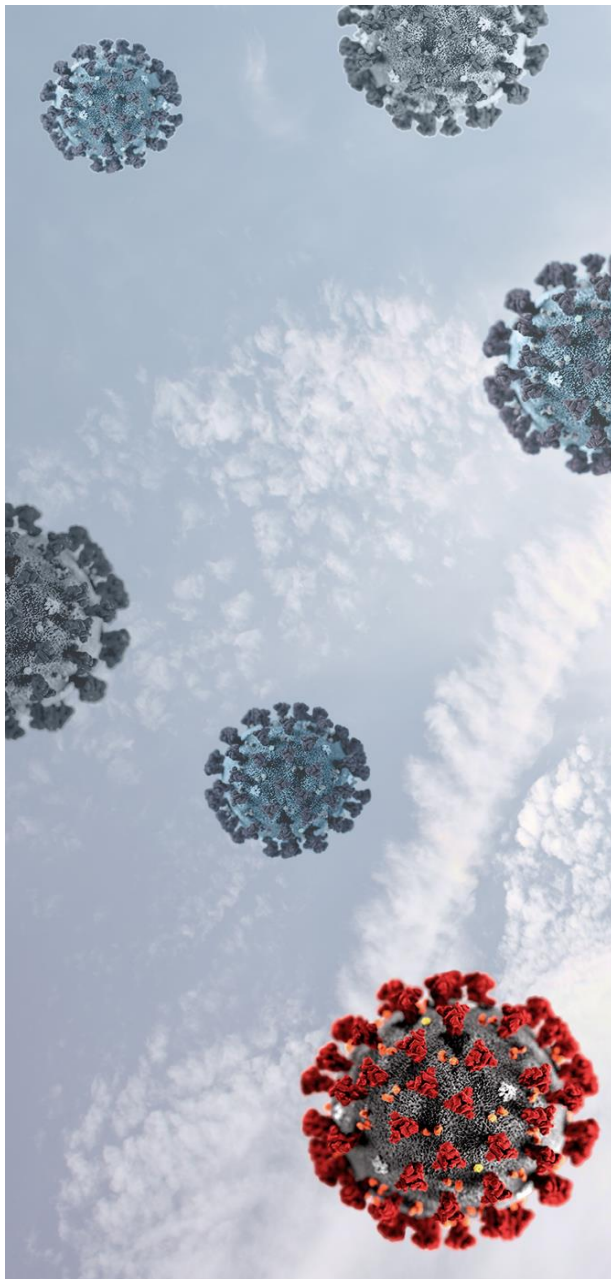

COVID-19: Measures applicable to the financial sector

Newsletter | Portugal

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Banking services:

- > Moratorium on credits
- > Consumer credit
- > Payments
- > Dividend distributions
- > Reporting and disclosure obligations

Investment services and capital market:

- > General meetings of issuers
- > Distance services - call taping
- > Reporting and disclosure obligations



I. Banking services

To mitigate the impact of the COVID-19 pandemic, the Government and Banco de Portugal (“**BdP**”), at a national level, and the European Banking Authority (“**EBA**”), at the European level, have adopted a set of recommendations and temporary and exceptional measures applicable to banking market players, specifically on issues regarding obligatory and voluntary moratoria, payment services, consumer credits and credit institutions’ dividend distributions.

To learn about the measures adopted for the financial system on March 18, consult the Legal Flash of our Banking, Finance and Capital Markets Department [here](#).

Moratorium on credits

Portuguese Decree Law 10-J/2020, of March 26, establishes a moratorium on credits for certain transactions carried out with individuals, companies and other entities. The regime is broad and comprehensive, and it recommends a case-by-case analysis of its applicability to contractual relations existing on the date it entered into force. To learn more about such Decree Law, consult our Newsletter of March 30 [here](#).

On April 2, EBA published its guidelines on the treatment of public and private moratoria in light of the COVID-19 pandemic, in response to questions raised on the prudential treatment of exposures covered by moratoria, specifically regarding their treatment under default and restructuring.

Main aspects of these EBA guidelines:

Criteria for consideration of the measure as a “general payment moratoria”

- > It must be established by public (legislative measures), private (i.e., voluntarily applied by the institutions) or mixed initiative (e.g., collaboration between authorities and institutions).
- > It must be specifically launched and applied in response to the COVID-19 pandemic (it must be announced or applied before June 30, 2020).
- > It applies to pre-established and sufficiently large groups of debtors.
- > The changes introduced in the credits subject to the moratoria shall only impact the schedule of payments and shall not amend other terms and conditions of the loans granted.



- > The schedules of payments mentioned in the preceding point should offer the same terms.
- > It does not apply to (new) loans granted following the launch of the moratorium.

Classification of moratoria as a forbearance measure

When the criteria are met for a “general payment moratoria” as indicated above, the moratoria will not be classified as forbearance measure under article 47B of the Capital Requirements Regulation (“CRR”), nor will it be considered an indicator of unlikeliness to pay under article 178.3.d) of the CRR. Therefore, the exposures covered will not be classified as restructuring when that classification already existed when the moratorium was applied.

Treatment of exposures and default

To calculate the schedules relative to (i) the indicators that forbearance measure may have been adopted, specifically, that initial contract was past due by more than 30 days at least once during the previous three months, and (ii) the confirmation of a case of default, in other words, the obligor is more than 90 days past due on any material credit obligation to the institution, the institutions will count the days past due based on the (revised) schedule of payments resulting from the application of any moratorium.

However, for the duration of the moratorium, institutions will assess the potential unlikeliness to pay of the obligors subject to the moratorium, according to the policies and practices that usually apply. Also, these assessments will be prioritized when, soon after the moratorium no longer applies, payment delays are confirmed, or forbearance measures are applied.

Reporting

The EBA recommends that certain information should be reported to national competent authorities so that they are aware of the type of moratoria applied, as well as the main characteristics of the loans covered.

Under article 9 of Decree Law 10-J/2020, of March 26, all exposures covered by the moratorium must be reported to the Central Credit Register. BdP published clarifications on the reporting model regarding the classification that should be included, among the characteristics listed with the agreement in question.



Consumer credits

Regarding consumer credits, BdP issued a public statement on the macroprudential recommendation on new consumer credits within the context of the COVID-19 pandemic. We highlight the following measures:

- > Some individual credits with maturities of up to two years intended to mitigate the temporary liquidity shortage situations of households will no longer have to comply with (i) one DSTI ratio limit (debt service-to-income ratio), or (ii) the recommendation of regular principal and interest payments.
- > The recommendation that entered into force on April 1, 2020, on the reduction of maximum maturity of personal credit to seven years, will be maintained (except for certain, specific objectives, which will continue to have a maximum maturity of 10 years).
- > The recommendation is not an impediment to applying for a moratorium to address temporary liquidity shortage situations of households, including a voluntary moratorium.

At the European level, EBA published a series of considerations on the need for credit institutions to adapt consumer protection measures in the EU, namely:

- > Any information provided to customers must be complete and full disclosed, particularly information regarding potential charges and costs; the transparency and clarity of the corresponding terms and conditions should also be guaranteed.
- > Careful consideration will be given, from a legal and reputational perspective, of any new and additional charges relating to contingency measures adopted.
- > When possible, temporary measures shall be applied. Nevertheless, such measures shall not have negative implications for the consumer's credit rating (exposure reclassification will be avoided).

Payments

Acceptance of payments with debit or credit cards

In response to the COVID-19 pandemic, Decree Law 10-H/2020, of March 26, establishes exceptional and temporary measures to promote the use and acceptance of card payments, namely:

- > The fixed component of any fee for payment transactions with a card is suspended when made using point-of-sale terminals.



- > Payment service providers are prohibited from:
 - i) increasing the variable components of fees for transactions, as well as any other fixed fees not suspended according to the above paragraph; and
 - ii) provide for the collection of new fixed or variable fees in their prices regarding the acceptance of payment transactions with cards using point-of-sale terminals.

- > Economic operators with automatic point-of-sale terminals cannot refuse or restrict the acceptance of payments with cards, regardless of the transaction amount.

Increase of the maximum amount of payments through contactless technology

In compliance with EBA recommendations of March 25, BdP published that the national banking system, in collaboration with BdP and the SIBS, had decided to increase the maximum amount of payments made using contactless technology without entering a PIN. Therefore, the maximum amount for “contactless” payments (without entering a PIN) has been raised from €20 to €50 limit, which is in accordance with the maximum amount set out as a measure to exempt reinforced authentication, under the terms of Commission Delegated Regulation (EU) 2018/389, of November 27, 2017, regulating the Payment Services Directive 2.

Dividend distributions

On March 30, the European Central Bank (“**ECB**”) published the recommendation on dividend distributions during the COVID-19 pandemic, under which ECB recommends that no dividends be paid out for the 2019 and 2020 financial years until October 1, 2020. Significant credit institutions should also refrain from share buy-backs aimed at remunerating their shareholders.

EBA published a public statement reinforcing the ECB recommendations and, along with the above recommendation on dividend distributions, states that banks should inform the corresponding national authorities if they consider themselves legally required to pay out dividends or make share buy-backs. The statement also addresses issues regarding bank remuneration policies. Within this context, the EBA considers that national authorities should ask banks to review their remuneration policies, practices and awards.

The BdP, in turn, issued a public statement with the same recommendations regarding dividend distributions by less significant credit institutions subject to its supervision.



Reporting and disclosure obligations

On March 31, EBA issued a set of statements on compliance with information reporting and disclosure obligations. We highlight the following:

- > Prevention of money laundering and terrorist financing: credit institutions will continue to supervise transactions and will not overlook their legal obligations under laws and regulations on the prevention of money laundering and terrorist financing, and they should specifically report any suspicious activities to BdP.
- > Prudential information disclosures (Pillar 3): EBA encourages competent authorities to be flexible when assessing credit institutions' compliance with the deadlines for publishing their Pillar 3 reports. However, if institutions publish these reports late, they are expected to appropriately justify such delay.

II. Investment services and capital market

Within this framework, the Portuguese Securities Market Commission (“**CMVM**”), at the national level, and the European Securities and Market Authority (“**ESMA**”), at the European level, have also released a set of temporary and exceptional recommendations, which are applicable to investment services and capital market on the issuers, the provision of distance services and reporting by the various market players.

General meetings of issuers

The CMVM, the Portuguese Institute of Corporate Governance and the Association of Companies Issuing Securities Listed on the Market (*Associação de Empresas Emitentes de Valores Cotados em Mercado*) have published a set of recommendations and clarifications on holding general shareholder meetings. We highlight the following:

- > The legal possibility of holding remote general meetings using telecommunication and videoconferencing tools. The shareholders shall be informed of the general meeting by telematic means in the corresponding convening notice.
- > If, for operational reasons, companies cannot hold remote general meetings using telecommunication and videoconferencing tools, companies will resort to a combination of in-person and virtual means.
- > Before the general meeting, the information will be published exclusively on the company website and, when appropriate, on CMVM's IDS (Information Disclosure System).



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- > Voting and information rights will be exercised by email.
- > The means made available to the general meeting chairman to identify shareholders who are present will ensure a high level of certainty and security.

Distance services - call taping

In a public statement dated March 20, ESMA issued a series of questions regarding the application of the requirements of the Markets in Financial Instruments Directive (**MIFID II**) relating to the taping of telephone calls with investors. It confirmed that the obligation to record these will be maintained, except for exceptional circumstances caused by the COVID-19 outbreak. In these situations, ESMA recommends the use of alternative mechanisms to mitigate the risks related to the absence of a recording (e.g., written call records).

Reporting and disclosure obligations

On March 20, CMVM published a series of resolutions and recommendations, essentially regarding reporting obligations. We highlight the following:

- > The obligation is reinforced to report any information to the CMVM that could be vital for assessing the consequences of COVID-19, specifically regarding asset management; in these cases, daily information will be required.
- > Greater flexibility is provided for reporting obligations regarding notices to trade repositories on securities and reuse financing transactions ("**SFTR**").
- > The difficulties of timely compliance with reporting obligations are assessed in light of restrictions deriving from the COVID-19 pandemic.

In addition to these decisions, ESMA and CMVM issued other public statements on compliance with reporting obligations. We highlight the following:

- > Securities financing transactions: On March 18, ESMA issued a public statement on the extension of reporting obligations established in the SFTR and the Markets in Financial Instruments Regulation (**MIFIR**).
- > Calculation on the transparency of investments in capital instruments: On March 25, ESMA issued a public statement on the application date of calculations on transparency obligations of investments in capital instruments, included by the



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MIFID II/MIFIR, in which it was resolved not to change the date of those calculations (namely, April 1, 2020).

- > Transparency directive: On March 27, ESMA issued a public statement in which it recognized that issuers may experience difficulties in complying with the reporting period deadlines established in the Transparency Directive. The compliance with periodic reporting obligations (i.e., reports and annual and half-yearly financial reports) should not take priority, whereby the delay in compliance with the disclosure periods established in the Transparency Directive are allowed.

- > Best execution reports under MIFID II: According to the ESMA's public statement dated March 31, the following reporting periods were extended:
 - Quarterly reporting (relative to the previous quarter, between October 1 and December 31, 2019) that should be published under article 11 of the Delegated Regulation of the MIFID II; if this information cannot be published by March 31, the execution venues should publish them as soon as possible after that date and no later than the following reporting deadline (i.e., June 30, 2020).

 - Reports that investment firms should publish annually under the Commission Delegated Regulation (EU) 2018/389 may be published through April 30 and no later than June 30.

- > Prevention of money laundering and terrorist financing: the CMVM's Circular letter of April 2 extended the deadline for complying with the obligation under article 21 of CMVM Regulation 2/2020 for three months, until September 30.



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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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