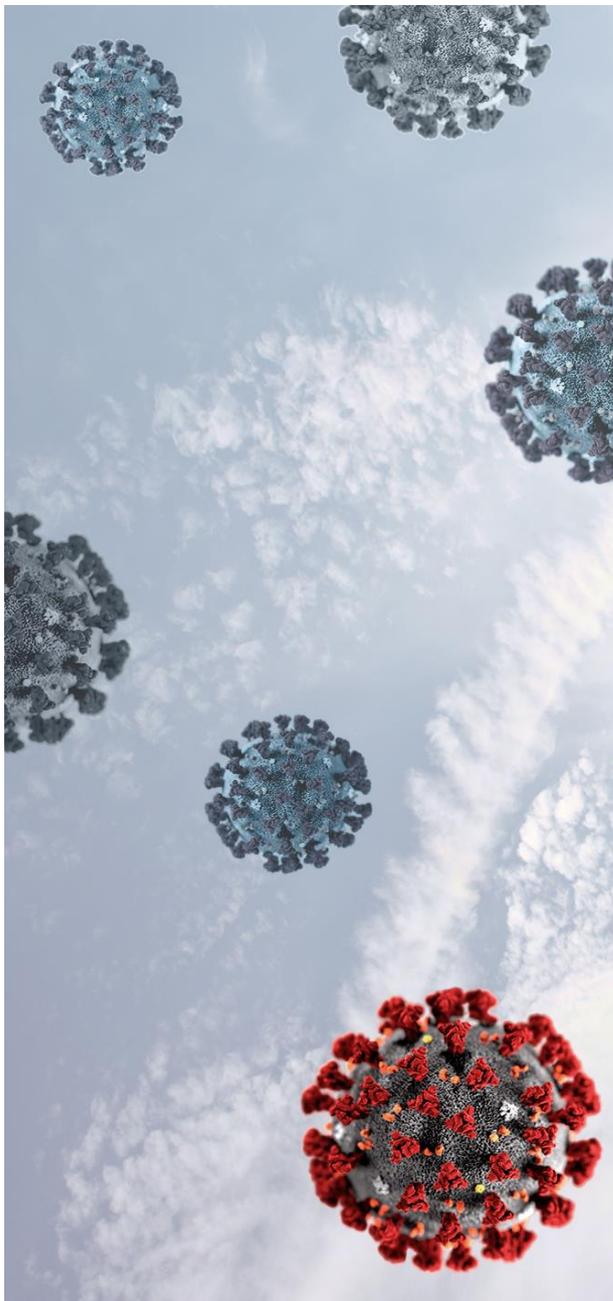

COVID-19: Insurance and pension funds

Newsletter | Portugal

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- **ASF flexibility measures and recommendations**
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- **Insurance products**



I. Flexibility measures and recommendations

Circulars of the Insurance and Pension Funds Supervisory Authority (the “ASF”) no. 2/2020, of March 30 (Insurance companies), no. 3/2020, of April 1 (Distribution of insurance), and no. 4/2020, of April 2 (Managers and pension funds)

Under Decree 2-B/2020, of April 2, regulating the extension of the state of emergency established by Decree of the President of the Republic no. 17-A/2020, of April 2, insurance, banking and financial services are still considered essential services and, therefore, must not be suspended.

To guarantee uninterrupted continuity of these services; maintain corporate governance processes aligned with the sector’s requirements; protect the interests of policyholders, insured parties, participants, beneficiaries and injured third parties; and preserve financial stability, the ASF—in accordance with the guidelines published by the European Insurance and Occupational Pensions Authority (the “EIOPA”)—has issued a series of circulars with flexibility measures and recommendations for the exceptional situation generated by the coronavirus/COVID-19 pandemic.

As a precaution, the ASF recommends that pension fund managers and insurance companies based in Portugal, supervised insurance-sector portfolio companies, and branches of insurance companies from third countries should adopt measures to restrict capital management policy actions constituting capital depletion of companies, particularly dividend distribution and intra-group financing.

Also, close monitoring is recommended for insurance products and pension funds redemption/repayment requests, as well as the duty to inform customers/participants of the amount of the possible losses caused by the redemption/repayment, specifically in insurance policies without associated guarantees, and savings and retirement plans.

In terms of conduct, all entities operating under the principle of freedom of establishment or the free provision of services in the Portuguese market are advised to be flexible when dealing with situations that may arise, within the limits of the applicable law, and to try to meet the needs of customers, particularly in the following cases:

- default on insurance premiums or pension fund contributions, particularly for reasons not attributable to them;
- lack of provider availability preventing fast regularization of incidents. In this case, solutions should be adopted to defend the interests of the injured parties while enabling the speedy resolution of the incidents notified.



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Use of technology is encouraged to ensure that customers receive the necessary support to take out and manage insurance products, and to fulfill the contracts.

Finally, above all, they are advised to provide customers with clear and appropriate information on the contractual terms of their products, particularly as regards changes arising from the coronavirus/COVID-19 pandemic and the scope of the cover provided, specifically the applicable exclusions. The aim is to guarantee consistent treatment of like-cases and ensure that customers are aware of the scope of their policy cover and of the terms applicable to their pension funds.

Regarding the supervisory actions performed by the ASF and other market players, the intention is to provide increased flexibility in request response times, with the exception of requests related to the coronavirus/COVID-19 pandemic. On the other hand, *in situ* prudential and conduct supervision actions scheduled for the coming months (including April) will be suspended/canceled. Likewise, insurance companies and managers are given 20 business days to respond to claims submitted by claimants through the ASF and to the ASF.

As for submitting information, the periods linked to the accounting information submission obligations are relaxed for solvency and conduct control purposes, consistent with the aim of guaranteeing harmonization in supervisory practices with the national supervisory authorities of other Member States.

The ASF has also clarified that insurance companies must consider the current situation as a “major development” for the purposes of section 84 of the insurance and reinsurance activity’s legal regime, approved by Law 147/2015, of September 9, and must publish—together with the information as at December 31, 2019—any information considered appropriate on the impact of the coronavirus/COVID-19 pandemic.

With regard to the additional measures and the extraordinary submission of information, the ASF has determined that:

- insurance distributors must inform the ASF of any critical situation in which the distributor cannot guarantee the continuity of its services;
- insurance companies and pension fund managers will periodically submit extraordinary reports to the ASF with the main aim of identifying and assessing the impact of the effects of the coronavirus/COVID-19 pandemic; and
- insurance companies and pension fund managers are also obliged to inform the ASF immediately of any serious interruption to their activity and the operation of the pension funds they manage; of any event affecting their financial, liquidity or solvency position; of any event that has a significant negative impact on their reputation; and of any other situation that the ASF may identify.



Finally, as part of the extraordinary information that pension fund managers must submit, the ASF will also supervise the financial situation of pension funds and collective subscriptions that finance defined-benefit pension plans, to safeguard the interests of the pension fund beneficiaries and participants. In particular, it will assess their solvency and liquidity position.

Legislative and regulatory initiatives

With regard to the temporary measures set out in Law 147/2015, of September 9, namely temporarily deducting technical provisions and temporarily adjusting the relevant risk-free interest rate term structure, given that the approval of new use requests is prohibited by Regulation 6/2015-R, of December 17, the ASF will make a regulatory change to allow new, duly justified requests to be submitted under the terms to be set out.

Publication of the amendment to Regulation. 6/2019-R, of September 3, is pending. It aims to introduce an exception system allowing training entities providing insurance training courses to request that the ASF allow the onsite training activity, as well as the final written assessment, to take place remotely, after verifying certain minimum requirements, in situations in which, due to *force majeure*, particularly related to public health, there are limitations on the execution of onsite sessions.

Given that, in the current context, green cards issued under mandatory third-party motor insurance may not reach the insured parties on time, legislative measures are being assessed to guarantee that the cards can be sent by email and presented to the authorities in digital format.

II. Moratorium and insurance products used to secure credit

Decree Law 10-J/2020, of March 26

Decree Law 10-J/2020, of March 26, provides that insurance contracts securing credits subject to the moratorium envisaged in it will remain valid during the period of that moratorium, and their term will be extended for the additional term of the credit. This applies to credits to be repaid at the end of the contract, or for the period that the payment schedule is extended in the case of credits to be repaid in installments or with maturity of other cash benefits in installments.



This measure repeals the general regime of insurance premium default included in the legal regime of insurance contracts, approved under Decree Law 72/2008, of April 16. In practice, it entails that, when the repayment of the credit and other associated charges (including insurance premiums) is suspended, the insurance contract cannot be canceled by the insurance company, which will remain bound by it and must therefore cover the risk as long as the repayment obligation that the insurance seeks to secure remains.

The objective and subjective scope of Decree Law 10-J/2020, of March 26, is defined: for individuals, it only covers mortgage loans, i.e., it only applies to life insurance and homeowners insurance contracts securing the mortgage loan.

However, taking into account the ASF's recommendations stated above and to safeguard the interests of customers in a vulnerable position due to the coronavirus/COVID-19 pandemic, and given that, relating to other credit agreements formalized with individuals, financial institutions have adopted measures to apply a similar moratorium to that granted to mortgage loans under Decree Law 10-J/2020, the assessment of the continuity of the insurance contracts securing those credits in these cases must be confirmed on a case-by-case basis with the corresponding insurance company.

III. Insurance products

Remote working and occupational accident insurance

Given the use of remote working as a means to prevent and contain the COVID-19 epidemic, on March 17, 2020, the ASF published a consumer warning clarifying that, for the purposes of occupational accident insurance, accidents registered while working remotely, whether following instructions issued by an authority or the employer, will be considered as accidents at work under applicable law and therefore covered by the mandatory accidents at work insurance.

For these purposes, the following definitions apply:

- “Workplace” means any place where the worker is or to which he or she must travel under their employment contract, and where they are directly or indirectly subject to the employer's control.
- “Working day” means, in addition to the ordinary working day, the time before starting work devoted to acts related to work or preparing for work, and the time after work, also devoted to acts related to work, as well as the normal or mandatory work breaks.



However, for clarity, in situations in which workers work remotely, it is necessary to formalize and communicate this system to the insurance company, indicating where the work will be carried out and the applicable ordinary working day.

Short-term export-credit insurance - Communication from the Commission on the temporary framework for state aid measures to support the economy in the context of the current COVID-19 outbreak (2020/C 91 I/01)

The European Commission's Communication on short-term export-credit insurance (2012-C 392/01) provides that marketable risks (that is, commercial and political risks with a maximum risk period of less than two years, on public and non-public buyers in the countries listed in the Annex to that communication) cannot be covered by the export-credit insurance backed by Member States.

However, as a result of the current pandemic, it cannot be ruled out that, in certain countries, marketable risks temporarily lack cover. The Commission's Communication on the temporary framework in the context of the COVID-19 outbreak envisages that Member States can prove the market gap providing sufficient evidence of the lack of availability of risk cover in the private insurance market.

Therefore, use of the exemption clause on non-marketable risks set out in section d) of point 18 of the Communication on short-term export-credit insurance will be considered justified if:

- a prominent, internationally recognized private export-credit insurer and a national credit insurer demonstrate that that cover is not available; or
- at least four export companies consolidated in the Member State's market provide evidence of insurance companies refusing to participate in specific operations.

Life insurance

Most life insurance policies do not exclude situations deriving from an epidemic or pandemic and, therefore, "death" due to COVID-19 will, in theory, be covered. However, policyholders and insured parties should check and confirm the exclusions specifically applicable to their insurance policy and, if necessary, clarify any doubts with their insurance company or broker.

Health insurance

The Portuguese Fundamental Health Law (*Lei de Bases da Saúde*) does not prohibit insurance policies from excluding epidemics in their clauses. Also, the general conditions provided in health insurance policies offered by most Portuguese insurance companies



exclude infectious diseases from the scope of their cover when it is an epidemic declared by the competent authorities. However, this does not affect the validity of the policy, and the rest of the cover will remain in force.

In the current context, and despite this exclusion, by applying the principle of private autonomy, most insurance companies have assumed the health care costs incurred up to a positive test, including the cost of the test. From that moment, and as currently indicated by the Directorate-General for Health, the insured party will be referred to the National Health Service.

Third-party motor insurance

The Council of Ministers approved a set of measures to tackle to the new coronavirus (COVID-19) epidemic in Decree Law 10 C/2020, of March 23, establishing an exception system for regular motor and trailer technical inspections, during which the breach of the regular inspection obligation will not affect third-party motor insurance or the insurance company's right of recourse.

However, this situation does not apply to the essential vehicle inspection services system, regulated under Ministerial Order no. 80-A/2020, of March 25, which must be ensured for the vehicle categories and the cases indicated in it.

Travel insurance and assistance coverage

Travel insurance and assistance coverage includes cancellation risk in the scope of its cover. However, in most policies, this is only envisaged in case of illness. The definition of "illness" for the purposes of the insurance contract varies in accordance with the policy, and in most cases it requires not only a medical diagnosis but also hospitalization of at least 2 days. Moreover, whether the illness exclusively affects the insured party or it can be extended to other people, particularly those they live with, or only their spouse and children, also varies from one policy to another.

As well as cases of illness, there are insurance companies in the market that cover travel and accommodation expenses in case of cancellation due to mandatory quarantine (imposed by a competent authority) of the infected person.

With regard to these specific points, policyholders and insured parties should check and confirm the exclusions specifically applicable to their policy and, if necessary, clarify any doubts with their insurance company or broker.



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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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