

COVID19

WHAT HAPPENS TO MY CONTRACTS?

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As Portugal and the world prepare for difficult times, tourism takes a break, the economy slows down, orders are cancelled, people worry about those close to them, fear takes hold of many and everyone tries to see an end to the crisis. The coronavirus is today's subject for all of us.

And in the middle of the crisis, legal issues are beginning to arise.

How does my job situation look now that the company for which I work has suspended its activities? What about the mortgage loan instalments due to the bank to pay off the mortgage? Can I suspend payment of rent of the shop or office that is now closed? Can I cancel the order I placed for delivery in April? What can I do if I don't have staff to complete the contract or the service? What if I don't have materials and equipment that should come from China?

In this first article we address some of these issues, with the promise that over the coming weeks Macedo Vitorino will provide more detailed information on the legal impact of the coronavirus crisis on the lives of companies and individuals.

Employment contracts

The Portuguese Government approved a "Simplified Lay Off" scheme that allows the company to suspend employment contracts for up to six months, during which the employee receives 2/3 of his/her gross salary, of which 70% will be paid by the Social Security and 30% by the employer.

Financial support is granted for a period of one month, renewed monthly, up to a maximum of six months, only when the company's employees have enjoyed the maximum annual vacation leave days and when the employer has adopted the working hours flexibility mechanisms provided for by law.

For more information on this topic read our Newsletter: [Covid-19 and Employment Support \(Portuguese only\)](#).

Loan contracts for home purchase

As a rule, these contracts will remain unchanged unless the Government approves a bill suspending payment of bank loans or interest on housing mortgages.

We expect that, as in Italy, the Government will introduce specific legislation allowing for a total or partial suspension of loan repayments and possibly interest relief. However, as long as no such measure is approved, contracts will have to be honoured.

House rental contracts

Medium or long-term rental contracts will remain unchanged. Tenants who continue to use the leased properties will be required to continue to pay their rent on time.

In some cases, the present crisis may imply a loss of interest in the lease. For example, in temporary leases of students who leave the apartment or leased residence may invoke a "change of circumstances" to end the lease under Article 437 of the Civil Code.

Article 437.1 of the Civil Code states that *"If the circumstances on which the parties based their decision to contract have undergone an abnormal change, the injured party has the right to terminate the contract, or to modify it according to fairness judgments, provided that the requirement of the obligations assumed by him seriously affects the principles of good faith and is not covered by the risks inherent in the contract"*.

It seems clear to us that in the case of student rentals or other short-term rentals, the tenant, who no longer has an interest in or can no longer use the rented property, may put an end to the lease.

There are two conditions for invoking this rule:

- (a) First, the tenant ceases to use the rented accommodation during that period;
- (b) Second, the contract must be of short duration and severely affected by its interruption for a period that is expected to last from three to six months.

For longer contracts the question no longer arises. The loss of interest in the dwelling will be temporary, so the tenant might be interested in not paying rent, but not in terminating the contract. The longer the contract the less reason the tenant will want to stop paying the rent and still keep the contract in place when the crisis is over.

Commercial leases

For commercial leases the situation is similar, but not identical.

In commercial leases there will be some cases where the suspension of the tenant's activity was decided by it as a response to the crisis, such as service companies that started working remotely, and others where it was or will be imposed by the Government, such as restaurants, hotels or street shops.

In both situations, the public health crisis is the same and the material reasons for the suspension of activity are the same: the emergence of the situation, its unavoidable nature and the need to protect its workers and the community in general. Even so, in the second case, the closure of the establishment will

result from an administrative order and therefore legally stronger than the first, but in substance they are identical and should receive the same treatment.

In these cases, the duration of the contract is key. In long and medium-term contracts, there is no reason to terminate the contract because of the "change in circumstances", but there may be a reason to revise the contract in accordance with fairness.

In our opinion, in long-term contracts of three or more years, there does not seem to be any doubt that the risk of business interruption should be entirely at the tenant's expense. After all, the interruption is not caused by an earthquake or any other natural cause preventing the use of the property, so the risk of the business is the tenant's, in the same way that economic crises, long or not so long, more or less severe, do not justify the cessation of payment or the revision of rents.

For contracts with a term of less than three years, a six-month interruption is equivalent to a significant part of the contract duration, which may justify a partial reduction in rents or even suspension of payment during the period of inactivity.

The best solution will be to negotiate with the landlord because failure to comply with the contract carries the risk of the landlord filing an eviction suit, in which case he will most likely be right. To continue to fulfil the contract and ask in court for compensation from the landlord for the time of closure based on changed circumstances seems possible to us. In some cases, it would even be possible to file an injunction to suspend payment of the rent, but the court's decision may be delayed because of the disruption to the functioning of the courts caused by the crisis.

Construction contracts

Despite the closure of trade, we still see many construction works taking place in Lisbon and in other cities of Portugal. For the time being, there does not seem to be much disruption, but as time goes on, contractors may find it difficult to keep the works going at the same pace or be forced to stop work due to a lack of manpower, epidemic outbreaks among their workers or failures in their suppliers of equipment and materials. It is even possible that if the crisis worsens the Government will order all people to stay at home with the exception of certain essential services such as the supply of water, electricity, gas or the transport and sale of food and basic necessities.

The outbreak of an epidemic can thus cause significant delays in the performance of works contracts or even their interruption for a long period.

These situations are called "impossibility of performance" and are regulated in the Civil Code. Paragraph 1 of Article 790 establishes that the obligation is extinguished "*when the service becomes impossible for reasons not attributable to the debtor*", that is, the debtor is not obliged to perform the contract when performance becomes impossible. In most contracts, however, it will not be a "definitive impossibility", but temporary because the contractor will still be able to fulfil when the situation is normalised.

Therefore, in the vast majority of situations Article 792 of the Civil Code will apply, which will allow the contractor to delay performance on the assumption that the owner of the work maintains interested in

the completion of the works even if with delay. In these cases, there will be a justification for the delay, which will have to be demonstrated in each case for the reasons described above.

In these cases, a "change of circumstances" may require the revision of the contract terms. For instance, if an equipment, which is to be installed on the site, is no longer available and has to be replaced by another, or the equipment price increases significantly, which justifies an increase in the final price of the work.

Service contracts

The regime of "impossibility" of compliance foreseen in articles 790 et seq. of the Civil Code or the change of circumstances foreseen in Article 437 also of the Civil Code may be applied to service contracts.

The application of either scheme depends on the specific circumstances of the case. For example, if a single service is provided by a self-employed person who falls ill, the situation may be one of "subjective impossibility", since the debtor is no longer able to do what he committed to. In such cases, the creditor may no longer have any interest in the service, for example a lawyer's legal opinion or a medical consultation. The contract will be terminated without the service provider having any obligation to pay compensation.

In others, the service may become objectively impossible because there is no access to the place where it is to be provided, closed because of the epidemic outbreak, as will be the case with equipment maintenance contracts.

In other cases where the change of circumstances will require a price revision or a change of the contract object in favour of the service provider (debtor) or whoever hired it (creditor).

In long-term contracts, such as regular maintenance or cleaning services, the creditor may lose interest in the provision. Compliance may still be possible and the service provider may want to maintain the service, but the creditor may no longer need the service because it is not justified in the current circumstances. For these cases Article 437 of the Civil Code will apply and the creditor may request the termination or the amendment of the contract on equitable terms, i.e. balanced and fair conditions for both parties.

Supply contracts

It is to be expected that the crisis will affect many supply contracts. There will be delays in the supply of goods and materials, disruptions in transport within and from out of Portugal which will cause a domino effect on distribution chains, etc. All these situations may justify the termination or revision of the contract by "objective impossibility" or "change of circumstances" as explained above.

In addition to these situations, there will be many cases where buyers will lose interest in the supply and will want to terminate or suspend the contract while the crisis lasts. For example, closed hotels and restaurants will no longer be interested in receiving the food, hygiene products and all the others that support their day-to-day activities.

In those cases, the 'change of circumstances' rule in favour of the purchaser applies, which may require the revision of the contract, postponing or suspending the supply, or even its termination.

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