

A background image showing several spherical coronavirus particles with characteristic surface spikes, rendered in a light gray, semi-transparent style against a dark gray background. The particles are scattered across the page, with one large, detailed particle in the center-left and several smaller, more blurred ones around it.

TELLES
— ADVOGADOS —

CORONAVÍRUS

**State of
Emergency
Measures**

21.03.2020

I. The Declaration of the State of Emergency

In order to deal with the public health emergency situation caused by the spread of COVID-19, the State of Emergency was decreed on March 18 for the entire Portuguese territory, for a period of 15 days, without prejudice of possible renewals of said State. With the declaration of the State of Emergency, the following rights are partially suspended

- i) right to travel and settle anywhere in the national territory;
- ii) property Law and Economic Private Initiative;
- iii) Employee Rights;
- iv) right of International circulation;
- v) right to assemble and protest;
- vi) right of freedom of worship, in its collective dimension, and
- vii) right of resistance.

We highlight the following measures that were introduced by Presidential Decree that approves the State of Emergency:

- i. The Government may impose mandatory quarantine at home or in the hospital, as well as establish sanitary fences. In addition, it may limit permanence on the public road and prohibit any kind of displacement, except for those intended for performance of professional activities, obtaining health care, assisting third parties or catering essential goods at the supermarket. The circulation, if it happens, should be, preferably, unaccompanied;
- ii. The use of movable property and real estate, commercial and industrial establishments, companies or production units may be requested by Public Authorities. It should be noted that the possibility of determining the mandatory functioning, closing and other impositions or modifications to the activity of the companies is also foreseen, including changes to the quantity, nature or price of the goods produced / traded, as well as to the respective procedures and circuits of distribution and commercialization;

- iii. It may be required to request from workers, regardless of their employment relationship, to perform functions, if necessary, at a different location, time and to a different entity. It should be noted that this requirement should mainly cover workers in the health, civil protection, security and defence sectors, as well as the sectors of production, distribution and supply of essential goods and services to the functioning of vital sectors of the economy and to the operation of critical networks and infrastructures;

- iv. Finally, and despite the possibility that border controls can be established, and have already been established, on the mobility of people and goods, by imposing compulsory confinement, necessary measures can be taken to ensure the international circulation of goods and services.

II - Implementation of the State of Emergency

Considering the main framework laid down in the declaration of the State of Emergency by the President of Republic, the execution of such measures is of the responsibility of the Government. Through Resolution of the Council of Ministers no. 2-A / 2020, of March 20, the Government proceeded to establish and execute measures to prevent the transmission of the virus and contain the spread of COVID-19.

Thus, and according to the Resolution, the main measures imposed focused on:

- i) Limits of Circulation on Public Roads;
- ii) Restriction on the functioning of retail spaces (this is not applicable to wholesale establishments);
- iii) Rules of operation or suspension of certain types of facilities, establishments and activities, including those that, due to their essentiality, must remain in operation.

Limitations on the Free Movement of People

Considering the published Resolution, as of 00:00 hours of March 22, the circulation on the public road (excluding for people subject to mandatory confinement or for which a special duty of protection is imposed) will only be allowed for certain specified situations, of which we highlight the following:

- The performance of professional or similar activities that cannot be carried out remotely;
- The acquisition of essential goods and services;
- For the search of employment or in response to a job offer.

It should be noted that private vehicles can continue to travel on public roads to carry out any of the activities or to refuel at gas stations, as well as to return home.

It should also be noted that, contrary to what happened in other countries, it is not required to fill out an appropriate form to allow circulation on the public road. However, companies that remain in business may consider preparing such documents for their workers, in order to prove they are commuting to work.

Private Initiative Restrictions

1. Remote Working – Requirement

The Resolution establishes that it is mandatory for companies to allow workers to work remotely, regardless of the employment relationship, whenever the carried-out functions allow for this.

The movement of people is permitted for the exercise of their professional activity, in case it cannot be carried out through teleworking. As such, economic activities relating to, for example, transport, health, factories and industry in general, construction and the provision of services in establishments not open to the public, are able to continue to be in operation, and do not have to close, at least not for now.

2. Activities of the Trade Sector

- Retail

Retail activities are suspended as of the entry into force of the Resolution, except for those that sell goods considered as being essential (for more details, please refer to Annex I of this note).

- Wholesale Trade and other establishments

On the other hand, the following activities are not suspended:

- i) Wholesale trade activities;
- ii) Establishments that maintain their activity exclusively for the purposes of home delivery, or the provision of goods with delivery at the door of the establishment or through mail. Note that in these cases, access to the interior of the establishment by the public is prohibited.

3. Provision of service activities

Every provision of service activities is suspended in establishments open to the public, other than those which provide basic services or other services regarded as essential, namely, agri-food production and distribution, maintenance and repair establishments for motor vehicles and motorcycles, among others (for more details, please refer to Annex II of the present document).

Restaurants and similar establishments may maintain their activity, but only for the sole purpose of home delivery or consumption outside of the establishment.

4. E-commerce, remote services and special cases

According to the Resolution, the following activities are not suspended:

- i) E-commerce;
- ii) Provision of service activities which are provided at a distance or which develop their activity through an electronic platform;
- iii) Retail trade activities or provision of service activities which are provided along the motorway, or inside hospitals and airports.

It should be noted that small retail trade establishments, as well as those providing local services, may, exceptionally and with proper justification, require an authorisation to operate.

5. Public services

Most offices of the public administration (City Hall, Tax and Social Security, etc) are closed. It is however possible to make appointments at these offices, but they are very limited.

6. General notes

- **Rental contracts**: as is to be expected, the closure of a vast majority of retail activities will create a significant pressure on tenants, who will continue to have to pay the rent whilst not receiving any income. The legislation published on Friday states that the closure of establishments cannot be invoked as a ground of termination of non-housing lease agreements or other form of agreement for the exploitation of real estate, nor may it be invoked as a ground for the obligation to vacate the property on which such facilities and establishments are installed;

- **Priority face-to-face service**: in retail or in the provision of service establishments which maintain their activity, people requiring a special duty of protection must be given priority;

- **Safety and hygiene rules**: retail or the provision of service establishments which maintain their activity must ensure, in physical spaces, (i) a minimum distance of 2 meters between persons, (ii) a stay for the time strictly necessary for the purchase of products and (iii) the prohibition of the consumption of products inside them;

- **Personal protection**: activities which remain in operation, in particular wholesale establishments, must comply with the health authorities' recommendations, namely the ones regarding hygiene rules and distances between people

We wish to draw attention to the fact that the failure to comply with the declaration of the State of Emergency (better identified in Section I of this information note) will be considered a crime, as better described in annex III.

Finally, we wish to reiterate that the declaration of the State of Emergency does not compromise, under no circumstances, the rule of law, and the rights to life, personal integrity, civil capacity and citizenship, the non-retroactivity of criminal law and also freedoms of expression and information.

Conclusion

The previously mentioned measures will have a very strong impact on all individuals and on vast sectors of the Portuguese economy. TELLES is prepared to help in the access to the support measures for companies already announced, namely financial, labour and tax measures, the renegotiation of lease agreement, drafting of declarations proving the displacement of workers to their workplaces and also in every other matter that may be required in these very difficult and unprecedented times.

ANNEX I

Activities that will have to close

1. Recreational, leisure and entertainment activities:

- Nightclubs, bars, and dance or party halls;
- Circuses;
- Amusement parks and leisure parks for children and similar;
- Water parks and zoos, without prejudice to the access of workers regarding the care of animals;
- Any premises for leisure sporting activities;
- Other similar premises or facilities.

2. Cultural and artistic activities:

- Auditoriums, cinemas, theatres and concert halls;
- Museums, monuments, palaces and archaeological sites or similar (interpretive centres, caves, etc.), national, regional and municipal, public or private, without prejudice to the access of workers for the purposes of conservation and security;
- Libraries and archives;
- Squares, bullfighting premises and facilities;
- Art galleries and exhibition halls;
- Conference centres, community halls, conference rooms and multipurpose pavilions.

3. Sports activities, except those intended for the activity of high-performance athletes:

- Soccer, rugby and similar fields;
- Enclosed pavilions and spaces;
- Futsal, basketball, handball, volleyball, roller hockey and similar pavilions;
- Shooting ranges;
- Tennis, paddle and similar courts;
- Skating, ice hockey and similar rinks;
- Pools;
- Boxing, martial arts and similar rings;
- Permanent circuits of motorcycles, motor vehicles and similar,
- Velodromes;
- Racecourses and similar tracks;
- Multisport pavilions;
- Gyms and academies;
- Athletic tracks;
- Stadiums.

ANNEX I

4. Activities in open areas, public areas and roads, or private areas and roads equivalent to public ones:

- Cycling, motorcycling, car racing and similar routes, except for those intended for the activity of high performance athletes;
- Nautical competitions and exhibitions;
- Aeronautical competitions and exhibitions;
- Parades and popular festivals or folkloric or other manifestations of any nature.

5. Gaming and gambling activities:

- Casinos;
- Games of chance establishments, such as bingos or similar;
- Game rooms and recreation halls.

6. Hospitality and catering activities:

- Restaurants and similar, cafeterias, tea houses and alike, with the exceptions of this decree;
- Snack bars and alike;
- Hotel bars and restaurants, except for the latter regarding the purpose of delivering meals to guests;
- Terrace bars;
- Vending machines.

7. Thermal and spas or related establishments.

ANNEX II

Activities that may remain open, as they are considered to be essential in the present circumstances

1. Minimarkets, supermarkets, hypermarkets;
2. Fruit shops, butchers, fish mongers, bakeries;
3. Markets, on the specific case of food products;
4. Agri-food production and distribution;
5. Fish markets;
6. Restoration and beverages, on the specific terms of the present decree;
7. Confection of ready-to-take meals home, on the specific terms of the present decree;
8. Medical services and other medical or social support services;
9. Pharmacies and other places of sale of non-prescription medicines;
10. Medical and orthopaedic establishments;
11. Opticians;
12. Cosmetic and hygiene establishments;
13. Establishments of natural and dietary products;
14. Essential public services and the correspondent repair and maintenance (water, electricity, natural gas and channelled liquefied petroleum gases, electronic communications, postal services, waste water collection and effluent collection and treatment, urban solid waste management and urban hygiene services and passenger transport services);
15. Stationery and tobacconists (newspapers, tobacco);
16. Social games;
17. Veterinary clinics;
18. Establishments for the sale of pet animals and their food;
19. Establishments for the sale of flowers, plants, seeds and fertilisers
20. Dry cleaning and washing establishments for textiles and fur;
21. Drugstores;
22. Hardware stores and establishments for the sale of diy materials;
23. Petrol stations;
24. Domestic fuel outlets;
25. Establishments for the maintenance and repair of motor vehicles and motorcycles, tractors and agricultural machinery, as well as the sale of parts and accessories and towing services;

ANEXO II

26. Establishments for the sale and repair of household appliances, computer and communications equipment and their repair;
27. Banking, financial and insurance services;
28. Funeral and related activities;
29. Home maintenance and repair services;
30. Home security or surveillance services;
31. Cleaning, disinfection, and similar activities;
32. Home delivery services;
33. Tourist establishments, except campsites, and those may provide catering and beverage services in the establishment itself exclusively for their guests;
34. Services that guarantee student accommodation;
35. Activities and establishments set out in the preceding paragraphs, though integrated into shopping centres.

ANNEX III

Description of the criminal contingencies associated with the non-compliance of the limited exercise of the rights listed in the Declaration of the State of Emergency

The Declaration of the State of Emergency approved by public health imperatives, as a measure to combat the covid-19 pandemic, provides, in general, the possibility of mandatory and compulsory confinement of citizens at home and restrictions on the movement on public roads, unless properly justified.

Failure to comply with the measures enacted in that context may have several criminal consequences. More specifically:

1. With the declaration of a state of emergency, **the right of movement and fixation in any part of the national territory was partially suspended**, as mentioned.

Persons who disobey the guidelines determined under the restricted right under review, commit a crime of simple disobedience and incur in a prison sentence of up to one year or in a fine of up to 120 days. The penalty of the fine incurred by natural persons will range between the minimum amount of € 50.00 and the maximum amount of € 60,000.00.

2. As mentioned, **the property right and private economic initiative** has been partially suspended due to the declaration of the state of emergency.

Individuals and legal persons who do not comply with the rules that may be determined under the restricted right under review commit a crime of simple disobedience and incur in a prison sentence of up to one year or in a fine of up to 120 days.

For example, the legal person who practices the activity of making bread and does not comply with the opening order of its production/commercial unit, will commit the crime referred above, and simultaneously the managing partner of such legal person will incur on the same individual criminal liability for the practice of the same legal type of crime. The same will happen in reverse, with the failure to comply to the determination to close an undertaking. The penalty of the fine incurred by natural persons will range between the minimum amount of € 50.00 and the maximum amount of € 60,000.00. The penalty of the fine in which legal persons incur ranges between the minimum amount of € 1,000.00 and the maximum amount of € 1,200,000.00.

ANNEX III

3. With the declaration of a state of emergency, workers' rights were partially suspended, in the following terms: " it may be determined by the competent public authorities that any employees of public or private entities, regardless of the type of job linkage, present themselves to the service and, if necessary, start to perform functions in a different place, in a different entity and under different working conditions and schedules of those corresponding to the existing employment relationship, in particular in the case of workers on the health, civil protection, security and defence sectors and other activities necessary for the treatment of patients, for the prevention and combating of the spread of the epidemic, for the production, distribution and supply of essential goods and services, for the functioning of vital sectors of the economy, for the operation of critical networks and infrastructures and for the maintenance of public order and the democratic rule of law. The exercise of the right to strike shall be suspended to the extent that it may jeopardise the functioning of critical infrastructures or health care units, as well as in the economic sectors vital to the production, provision and supply of goods and essential services for the general population".

Workers who do not obey or comply with a regularly communicated order from a competent authority or official commit a simple disobedience crime and incur in a prison sentence of up to one year or a fine of up to 120 days. At issue are the conducts of the workers who refuse to perform their functions outside normal working hours or in a place other than the laid down in their employment contract. Equal crime will be committed by the worker who exercises the right to strike in areas of activity that are essential for the population in general and in which such action causes the impairment of the normal functioning of such activities. The penalty of the fine incurred by natural persons will range between the minimum amount of € 50.00 and the maximum amount of € 60,000.00.

ANNEX III

4. With the declaration of the state of emergency, the right of assembly and manifestation was partially suspended, as follows: "restrictions may be imposed by the competent public authorities, based on the position of the National Health Authority necessary to reduce the risk of contagion and implement measures to prevent and combat the epidemic, including the limitation or prohibition of holding meetings or demonstrations that, by the number of people involved, enhance the transmission of the new Coronavirus".

In the event of disobedience, the legitimate order of dispersion of the public meeting given by the competent authority and with the warning that the disobedience constitutes a crime, the citizens involved in that meeting will incur in a crime of disobedience to the order of dispersion of a public meeting, punishable by imprisonment of up to one year or with a fine of up to 120 days. Therefore, the criminal type does not include the order given personally to an intervener of the public meeting to distance himself from it. This order, with an individual recipient, is subject to penal liability of the crime of simple disobedience, punishable also with imprisonment of up to one year or with a fine of up to 120 days. The penalty of the fine incurred by natural persons will range between the minimum amount of € 50.00 and the maximum amount of € 60,000.00.



The TELLES teams, from the different practice areas, worked together in order to provide their customers with the necessary and pertinent information in view of the current situation.