



COVID-19

Legal Insights no. 32

Decree Law no. 19-A/2020, of April 30th, which sets forth an exceptional and temporary regime applicable to long-term agreements in which the State or other public entity are parties, within the scope of the pandemic COVID-19 disease

Exceptional and temporary legal regime applicable to long-term agreements in which the State or other public entities are parties, in the scope of the disease COVID-19

The Decree-Law no. 19-A/2020, published in the Portuguese Official Gazette on the April 30th, 2020, establishes an exceptional and temporary legal regime applicable, in the scope of the disease COVID-19, to the following situations: (i) long-term agreements in which the Portuguese State or any other public entity are parties; and (ii) compensation for the sacrifice due to an act carried out by the Portuguese State or any other public entity in the scope of the prevention and response to this pandemic situation.

Therefore, as to long-term agreements, including public-private partnerships agreements, in which the Portuguese State or any other public entity are parties, Decree-Law no. 19-A/2020, of April 30th, foresees a general rule establishing that, as from April 3rd, 2020, all contractual and legal provisions that foresee the right to restore financial balance or obtain a compensation for losses are suspended. Hence, the private parties shall not benefit from any of the legal effects arising from those provisions, regarding to events, which may occur during the state of emergency and the pandemic situation of COVID-19.

However, the referred Decree-Law establishes that, in what regards to agreements where it is specifically foreseen the right of the private parties to be compensated by losses, or in which the occurrence of a pandemic situation constitutes a reason to justify a financial balance restoration request, the referred compensation or restoration may only be carried out through an extension of the deadlines established for the performance of the contract obligations or the extension of the contract duration.

Nevertheless, the revision of prices or the assumption of any liability by the public party shall never occur, regardless of any legal or contractual provision.

Notwithstanding, Decree-Law no. 19-A/2020, exempts the public-private partnerships agreements in road traffic sector from the above referred legal regime. Therefore, according to the referred legal statute, the obligations of road traffic concessionaires and sub-concessionaires arising from their agreements shall be temporally reduced or suspended, depending on case-by-case urgent determination, which shall be carried out by the granter or sub granter, considering, in particular, the updated levels of road traffic

in accordance with the reality of minimal services required to assure the appropriated protection of road traffic safety. In these situations, if the remuneration of the concessionaires or sub-concessionaires arises from payments of the grantor or sub-grantor, it shall be determined the reduction of the due payments, in the same measure of the reduction or suspension of the contractual obligations of the concessionaires or sub-concessionaires.

In addition, with reference to long-term agreements, Decree-Law no. 19-A/2020, establishes that, in what regards to public-private partnerships agreements, the rules provided by this legal statute shall prevail to those foreseen in Decree-Law no. 111/2012, of May 23rd. For this reason, Decree-Law no. 111/2012, of May 23rd is only applicable to the referred situations, providing that it does not challenge the rules established in Decree-Law no. 19-A/2020.

Notwithstanding, the rule foreseen in article 20 of Decree-Law no. 111/2012, of May 23rd, shall not be applicable to any act, measure, decision or other type of act, including those with regulatory nature, which were embraced by a public party during the pandemic situation of COVID-19, concerning public-private partnerships agreements, or with any effects applicable to those agreements. For this reason, Decree-Law no. 19-A/2020, waives the compliance of any proceeding or formality foreseen in article 20 of Decree-Law no. 111/2012, of May 23rd, regarding to the referred agreements.

On the other hand, Decree-Law no. 19-A/2020, establishes that the Portuguese State or any other public entity do not have the obligation to compensate the sacrifice arising from damages caused by acts dully executed by the same, in the exercise of the rights granted by health legislation or civil protection, or in the scope of the emergency state, for purposes of prevention and response to the pandemic situation of COVID-19. In these cases, the occurrence of the referred damages is due to cases of force majeure.

This Decree-Law entered into force on May 1st of 2020, with exception of the situation above referred.

To access to the complete text of Decree-Law no. 19-A/2020, of April 30th, please click on the following link:

[https://dre.pt/web/quest/pesquisa/-/search/132883341/details/maximized.](https://dre.pt/web/quest/pesquisa/-/search/132883341/details/maximized)

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