XIII. Compliance with regulators and supervisors

Glossary

AEM

Association of Listed Securities Issuers

ASF

Portuguese Insurance and Pension Funds Supervisory Authority

CMVM

Portuguese Securities Market Commission

ML/TF

Money Laundering/Terrorist Financing

ECB

European Central Bank

EBA

European Banking Authority

EIOPA

European Insurance and Occupational Pensions Authority

ESMA

European Securities and Market Authority

ICAAP

Internal Capital Adequacy Assessment Process

ILAAP

Internal Liquidity Adequacy Assessment Process

IORP

Institutions for Occupational Retirement Provision

IPCG

Portuguese Institute of Corporate Governance

NPL

Non-Performing Loans

OROC

Portuguese Order of Statutory Auditors

Regulatory Standard 8/2016-R

Regulatory Standard 8/2016-R of 16 August (Regulates data reporting by supervised entities to the Portuguese Insurance and Pension Funds Supervisory Authority (ASF) for the purposes of the supervisory functions entrusted to it by law)

Market Abuse Regulation

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014

RGICSF

Legal Framework of Credit Institutions and Financial Entities (Decree-Law 298/92 of 31 December)

RJASR

Legal Framework for access to Insurance and Reinsurance Activities (Law 147/2015 of 9 September)

RFFP

Legal regime applicable to pension funds (Decree-Law 12/2006 of 20 January)

SFTR

Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015, on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 of 4 July

SREP

Supervisory Review and Evaluation Process

XIII. COMPLIANCE WITH REGULATORS AND SUPERVISORS

XIII.A. Legal and regulatory reports to supervisory authorities[1]

Auditors should pay special attention to the legal provisions setting-forth an obligation to report to the supervisory authority of the audited entity facts or decisions concerning such entity, of which they become aware in the exercise of their functions, when such facts or decisions are likely, where applicable, to[2]:

- constitute a serious breach of the legal or regulatory provisions establishing conditions for authorisation or specifically regulating the entity's business activity; or
- affect the entity's business continuity; or
- determine the refusal to certify the accounts or the issuance of reservations; or
- lead to non-compliance with minimum capital or solvency requirements.

The CMVM informed that it will "evaluate, whenever necessary, difficulties in timely compliance with legal information reports in order to find solutions that adapt to the constraints that entities may feel in the current context of severe restrictions, without prejudice to the need for financial supervision to have the information in question".

The ASF has also clarified that, "in recognition of the adverse operating environment, and in order to relieve the administrative burden on operators, the ASF will provide more flexible deadlines for reporting and information disclosure, in a coordinated way with its European peers and with EIOPA, without prejudice to extraordinary reporting that will be necessary to monitor the impact of the current context until it has stabilised", which was implemented by Circular Letters sent to market operators.

The Banco de Portugal [the Portuguese Central Bank] has advised[3] that reporting obligations to the Banco de Portugal is suspended, or that the deadline for sending is extended or that the current contingency situation is acknowledged to constitute reasonable cause for potential non-compliance with the agreed deadlines, in relation to the following reports:

- financing and capital plans (financial year suspended, with the possibility of a new financial year in the second half of 2020);
- internal control report (can be sent until 30-09-2020);
- BC/FT prevention report (can be sent until 31-05-2020);
- report of first-quarter transfers to offshore jurisdictions (may be done in together with the report for the second quarter, until 31-07-2020);
- reports for resolution planning purposes (in some cases up to 30-04-2020 and in others up to 31-05-2020[4]);
- Instruction no. 5/2011 (Concentration Risk), Instruction no. 2/2019 and Instruction

(1) For more information on this topic, see Chapter XIII.E. Specifically on the banking sector, see *legal alert* published by Morais Leitão on 18-03-2020.

(2) See, for example, Article 121 of the RGICSF, Article 80 of the RJASR and Article 56 of the RFFP.

(3) For more information, see Circular Letter No. CC/2020/00000017, of Banco de Portugal, available at https://www.bportugal.pt/cartacircular/cc202000000017.

(4) "With regard to less significant institutions with no cross border activity it is considered admissible that information reports for resolution planning purposes be sent to Banco de Portugal until 31 May 2020, except for reports related to the liability structure of the institution/group (LDT) and with the information necessary for the assessment of the public interest of each of the institutions (related notably with economic functions), in relation to which the report should be sent until 30 April 2020."

no. 3/2019 (ILAAP and ICAAP) and Instruction no. 34/2018 (Interest rate risk of the banking book) (may be sent until 31-05-2020);
- Instruction no. 5/2013 (Credit impairment) and Circular Letter no. 2020/00000013 (Granting and restructuring of credits to higher risk debtors or debtor groups) (can be sent until 31-08-2020).

In addition, the Banco de Portugal communicated the suspension of stress tests, the postponement or suspension of all inspection actions and the rescheduling of the SREP[5].

XIII.B. Obtaining information related to the 2020 financial year and enhanced reporting

Taking into account the foreseeable limitations on the production of information and documentation and access to them, for a considerable part of 2020 (aggravated in the cases of entities with multijurisdictional activity and/or presence), careful early scheduling is advised for auditing services to be provided during 2020 and by reference to this period.

It is also essential to maintain open channels of communication with the audited entity, in order to ensure the best way to continue audit work and to maintain quality in the services provided, and, whenever necessary, with the OROC, the CMVM and other supervisory authorities.

XIII.C. CMVM and ESMA Decisions and Recommendations

The capital markets' supervisory authorities have been closely monitoring the spread of COVID-19 and have recently made a statement on a number of relevant topics, which are examined below.

(5) For more information on this topic, see Chapter XIII.E. below.

ESMA

SHORT POSITIONS

On 16-03-2020, ESMA issued a statement on **requiring net short positions (*short selling*) of 0.1% and above** (and each 0.1% above this limit) **in shares traded on a regulated market to be reported to national competent authorities (the CMVM, in Portugal)**. It should be noted that this measure does not apply to market making or stabilisation activities (*cf.* set forth in the Market Abuse Regulation).

The purpose of this decision is to underline the need for all national competent authorities to keep the net positions of market participants in mind, taking into account the recent exceptional developments in the financial markets, since short selling can contribute to accelerating price volatility and exacerbating market losses.

The measure came into force on 16-03-2020 and will remain in force for three months, i.e. until 16-06-2020.

RECOMMENDATIONS FOR FINANCIAL MARKET PARTICIPANTS

On 11-03-2020, ESMA issued recommendations on the financial market following the outbreak of the virus, which can be summarised as follows:

- **Business continuity planning**: all financial market participants, including infrastructures, **should be ready to apply their contingency plans**, including deployment of business continuity measures, to ensure operational continuity in line with regulatory obligations;
- **Market disclosure: issuers should disclose any relevant significant information as soon as possible concerning the impacts of COVID-19** on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation (especially regarding privileged information);

- **Financial reporting**: issuers should provide transparency on the actual and potential impacts of COVID-19, to the extent possible **based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their 2019 year-end financial report** if these have not yet been finalised or otherwise in their interim financial reporting disclosures; and
- **Fund management**: asset managers should continue to comply with requirements on risk management, and react accordingly.

POSTPONEMENT OF REPORTING OBLIGATIONS RELATED TO SECURITIES FINANCING TRANSACTIONS

On 18 March 2020, the ESMA published a statement on the postponement of the reporting obligations related to securities financing transactions under the regulations relating to transparency in these transactions and the regulations on markets in financial instruments.

The statement has been issued to ensure coordinated supervisory actions needed in response to the effect of COVID-19 on the application of SFTR, which requires that all securities financing transactions are reported to a registered trade repository.

In fact, SFTR states that: (*i*) credit institutions, investment firms and relevant third-country entities will be subject to applicable reporting obligations from 13-04-2020, (*ii*) followed by the central counterparties, central securities depositories and relevant third-country entities on 13-07-2020, and (*iii*) insurance companies, funds, institutions for occupational retirement provision (IORPs) and relevant third-country entities on 12-10-2020, with, finally, (*iv*) non-financial counterparties subject as of 11-01-2021.

ESMA expects competent authorities not to prioritise their supervisory actions and to apply their risk-based and proportional approach for the transactions concluded between 13-04-2020 and 13-07-2020 **and does not consider it necessary to register any trade repository ahead of 13-04-2020**.

CMVM

On 20-03-2020, and following the ESMA decisions and recommendations described above, the CMVM issued a statement detailing specific decisions and recommendations on COVID-19, which will be in force for an indefinite period and as long as the situation in the markets and in the national economy so requires, being updated whenever appropriate.

These are the CMVM decisions and recommendations, to be considered by each of the market players (always taking into account, in each specific case, the general duties that apply to members of governing bodies):

- **Monitor the operationality of the business continuity plans of the entities** under the supervision of the CMVM, taking into account the existing constraints for employees to travel to their workplaces, as well as the immediate communication to the CMVM of the activation of business continuity plans and possible situations wherein such continuity could be at a risk.

  On this point, it is important that issuers deciding to implement continuity plans maintain a constant dialogue with the CMVM and notify the Commission of their plans and associated difficulties whenever relevant;

- Clarify that business continuity plans **must ensure the capacity to comply with all legal and regulatory duties**, namely reporting information and safeguarding investor rights, including providing information to investors and registering orders received, namely by telephone or other phonographic channels.

In this case, issuers are advised to evaluate all the reporting and investor protection requirements to be met, covering them point by point in their business continuity plans;

- Assess, whenever necessary, difficulties in timely compliance with legal information reports in order to **find solutions that adapt to the constraints that entities may feel in the current context of severe restrictions**, without prejudice to the need for financial supervision to have the information in question.

  In line with the above, a list should be prepared of all the reporting requirements foreseen by law, for quick identification, evaluation of the feasibility of compliance and search for an appropriate solution, especially in conjunction with the CMVM;

- **Reinforce the reporting requirements to the CMVM, which is vital to assess the consequences of the circumstances arising from COVID-19**, namely by increasing the frequency of certain reporting obligations, especially in the scope of asset management, in which case daily information is required.

  This recommendation reveals a clear openness on the part of the Commission towards strengthening the relationship between market players and the Commission, encouraging reporting obligations to be multiplied above those already foreseen in the applicable legislation. The CMVM makes specific mention of regular information relating to asset management, for which the related reporting requirements must now take place daily. Detailed information is expected as to which requirements are subject to this reporting frequency;

- In line with EMSA's public statement dated 18-03-2020, **loosen the reporting obligations of investment firms and other entities required to report** financing transactions by means of securities and reuse to the transaction repositories, adopting an approach based on risk and proportionality.

  See EMSA's statement referred to above;

- **Increase daily contacts with management entities and market structures**, with a view to timely identify any possible challenges that may be posed to their activity.

  Taking into account the unprecedented situation in which Portugal and the market players find themselves, is it crucial to establish regular contact with the CMVM;

- In line with ESMA's recommendation dated 11-03-2020, issuers shall, in accordance with the market abuse rules, **disclose all relevant information on the impacts of COVID-19 on their business, financial situation and economic performance, as soon as possible.** The financial reports - particularly, the 2019 annual financial report if it has not yet been concluded or, otherwise, when reporting interim information - must also reflect both current and potential impacts, as far as possible, based on a quantitative and qualitative assessment. The availability of quality information is essential for good price formation in the market, and open markets are important so that investors can continue to invest, have access to liquidity, rebalance portfolios and comply with their obligations.

Issuers must now take additional care in preparing their 2019 financial reports (if it is still being written up) or in their interim reports, including additional information on the impact of this pandemic on their performance;

- **Recommend that issuers' general meetings take place using telematic means and that preparatory interactions are based on the use of electronic and remote means of communication**, with a view to making the exercise of shareholders' rights compatible with high standards of safety, health and well-being of all those involved. In this regard, CMVM, IPCG and AEM have issued a joint statement[6];

- **Constantly monitor the performance of investors with short positions in national issuers** and, depending on their impact for the market and for issuers, assess on a permanent basis, the possibility of introducing temporary prohibitions on the constitution or strengthening of short positions on shares traded in the national market, favouring that measures of this nature are adopted in a coordinated and uniform manner at European level.

  In line with the ESMA decision referred to above;

- Recommend that auditors implement **procedures and practices that guarantee audit quality**[7];

- Within an exceptional context, **advise retail investors to make informed, thoughtful decisions and, bearing in mind good investment practices and principles**, to contact the CMVM whenever they understand that their rights may be being limited by the current circumstances. For this purpose, the CMVM continues with its toll-free number 800 205 339 from 0900 to 1800. The general recommendations on sound investment remain valid.

(6) In this regard, see the common understanding of the CMVM, the Portuguese Institute of Corporate Governance and the Portuguese Issuers Association, in Chapter III.G.

(7) On this subject, see Chapter XIII.A. below.

MAIN ISSUES IN LIGHT OF THE POSITIONS OF ESMA AND CMVM

Topic	Risks	Framework/Recommendations
• Compliance with legal and regulatory requirements that apply to capital market players.	• Non-compliance with reporting requirements to the market and to the CMVM; • Making decisions which are not adequate according to the CMVM understanding; • Potential risk of incurring penalties, above all, due to administrative infractions and shareholder litigation.	• Maintain a constant dialogue with the CMVM; • Identify all information and reporting requirements and include them in business continuity plan; • Weighting of the application of the general duties of the members of the governing bodies in each specific case.

XIII.D. Obligations and acts before regulators/supervisors in the insurance sector

The EIOPA, in Europe, and the ASF, in Portugal, have already issued recommendations with a view to guiding the actions of insurance market operators (more specifically, insurers) within the context of the COVID-19 outbreak, in particular:

- EIOPA statement **on actions to mitigate the impact of Coronavírus/COVID-19 on the EU insurance sector,** 17-03-2020;
- ASF Information Note **on actions and recommendations in response to developments relating to the Coronavírus (COVID-19),** 18-03-2020;
- EIOPA recommendations **on supervisory flexibility regarding the deadline of supervisory reporting and public disclosure – Coronavírus/COVID-19**, 20-03-2020;
- Circular Letter 2/2020 **to insurance companies on flexibilization measures and recommendations in the exceptional circumstances regarding the Coronavirus - COVID-19 pandemic outbreak**, 30-03-2020**;**
- EIOPA Call to action **for insurers and intermediaries to mitigate the impact of Coronavírus/COVID-19 on consumers,** 01-04-2020;
- Circular Letter 3/2020 **to insurance brokers on flexibilization measures and recommendations in the exceptional circumstances regarding the Coronavirus - COVID-19 pandemic outbreak**, 01-04-2020**;**
- EIOPA Statement **on dividends distribution and variable remuneration policies in the context of COVID-19,** 02-04-2020;
- Circular Letter 4/2020 **to pension fund management companies on flexibilization measures and recommendations in the exceptional circumstances regarding the Coronavirus - COVID-19 pandemic outbreak**, 02-04-2020.

In the coming days, these entities are expected to issue further guidance to implement and/or develop the principles already put forward in the communications above.

EIOPA

In its statement on 17-03-2020 (*EIOPA statement on actions to mitigate the impact of Coronavirus/ COVID-19 on the EU insurance sector*), in light of the current situation and its impact on financial services, EIOPA has aimed to communicate a series of key messages to market operators, mainly insurers, in terms of business continuity and solvency and capital position, of which the following can be highlighted:

- **Business continuity** – it is important that insurers are able to **maintain the provision of services** to their clients, and as such should be ready to implement the necessary measures;

- **Flexibility regarding reporting**:
  - in accordance with EIOPA guidance (see *infra*), the competent national authorities should **be flexible regarding the timing** of supervisory reporting and public disclosure regarding 2019;
  - EIOPA **will limit its requests of information** to essential elements needed to assess the impact of the current situation in the market;
  - EIOPA is extending the deadline of the *Holistic Impact Assessment for the 2020 Solvency II Review* by two months, to 01-06-2020.

- **Solvency and financial condition**:
  - Insurance companies should take **measures to preserve their capital position** in balance with the protection of the insured, following **prudent dividend**

and other distribution policies (including variable remuneration);

- Notwithstanding and despite EIOPA's understanding that the sector is well capitalised and able to withhold significant shocks and losses, EIOPA does not entirely rule out the possibility, together with national authorities, of using the **tools available within the Solvency II framework to guarantee the protection of policyholders and financial stability** (including those related to solvency capital requirements).

Meanwhile, on 20-03-2020, EIOPA implemented the flexibility of deadlines by issuing the *Recommendations on Supervisory Flexibility regarding the Deadline of Supervisory Reporting and Public Disclosure - Coronavirus/Covid-19* intended for national authorities (in which it is, however, noted that insurance and reinsurance undertakings should maintain the possibility of submitting relevant documentation within the original deadlines, if they wish to do so).

In accordance with these recommendations, which aim, on one hand, **to focus the response to increasing difficulties** resulting from market conditions **on insurance and reinsurance undertakings**, providing operational flexibility and, on the other hand, ensuring that **supervisory authorities are fully informed** on further developments:

- **Recommendation 1**, on **Annual reporting** referring to year-end occurring on 31-12-2019 or year-end after that date but before 01-04-2020:

  - Competent national authorities should accept an **eight week delay** in the submission of the Regular Supervisory Report both at solo and group level, and of some of the Quantitative Reporting Templates identified in the Recommendation, with a **two week** delay envisaged for submission of the remaining Quantitative Reporting Templates;
  - Competent national authorities that have used the possibility to exempt insurance and reinsurance undertakings from quarterly reporting may consider requesting **certain additional templates** identified in the Recommendation in the annual submission with a two week delay from undertakings that have not reported Q4-2019 at solo level;
  - Competent national authorities should take **similar flexible approaches to any national specific reporting** or additional requirements (e.g. ORSA reporting deadlines, audit requirements, etc.);
  - Competent national authorities should submit the information received to EIOPA no later than four weeks upon receipt.

- **Recommendation 2**, on **Quarterly reporting** referring to quarter end on **31-03-2020** or after that date but before 30-06-2020:

  - Competent national authorities should accept **one week delay** in the submission of the Q1-2020 Quantitative Reporting Templates and the Quarterly Financial Stability reporting both at solo and group level with specific exceptions identified in the Recommendation, for which a **four week** delay in submission is envisaged;
  - For this **quarterly submission early submissions** are encouraged, allowing undertakings to take a **proportionate approach** to less material aspects of the calculations, recognising the importance of focusing effort on the overall accuracy of the submissions;
  - Insurance and reinsurance undertakings are expected to include in the Own Funds Template an **estimation of the Solvency Capital Requirement for the end of the quarter reference date**, rather than

a mere reference to the last calculation made in this respect (as indicated in the instructions in force for this purpose);
- Competent national authorities should submit the information received to EIOPA no later than four weeks upon receipt.

- **Recommendation 3**, on **Solvency and Financial Condition Report** referring to year-end occurring on 31-12-2019 or year-end after that date but before 01-04-2020:

  - Competent national authorities should accept **an eight week delay** for the publication of the Solvency and Financial Condition Report, with the exception of some information identified in the Recommendation, for which a **two week** delay in publication is envisaged;
  - Insurance and reinsurance undertakings should consider the current situation as a **"major development"** as referred to in article 54(1) of the Solvency II Directive (Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)), and publish at the same time as the information referring to the year-end, any appropriate information on the effect of the Coronavirus/COVID-19 in the published information.

On 01-04-2020, with the intention of building consumer trust in their treatment by the sector and warning of the disruptions caused to consumers by social distancing and self-isolation, which could prevent them fulfilling obligations or continuing with normal, expected behaviour, EIOPA calls on insurers and intermediaries, through a Call to action to mitigate the impact of Coronavirus/COVID-19 on consumers, to:

- **Provide clear and timely information to consumers on contractual rights,** in order to prevent *inter alia* inconsistent treatment of exclusions and the resulting reputational damage for the sector;

- **Treat consumers fairly and be explicit in all communications,** avoiding vague terms that could be misinterpreted or lead to confusion and take into account how consumers may react to volatile markets with the aim of mitigating risks of consumer detriment;

- **Inform consumers about contingency measures that insurers and intermediaries are taking and their impact on the contractual relationship and services provided,** among others, including:

  - Continuity of services (*e.g.*, moving services to online channels in greater extent);
  - Validity of insurance contracts (*e.g.*, temporary automatic extension for the duration of the emergency situation);
  - Changes to the claims' management procedures or to other services;
  - Additional organisation arrangements to deal with consumer inquiries (*e.g.*, publication of FAQs for consumers, contact details, helpline, etc.);

- **Continue applying product oversight and governance requirements,** taking into account the impact of COVID-19 on the availability of products and whether they remain consistent with the needs, characteristics and objectives of the identified target market and proceed with the necessary adjustments;
- **Consider the interests of consumers and exercise flexibility in how they are treated, where reasonable and practicable,** in particular retaining

important coverage that would otherwise be lost (without, as a general principle, imposing retroactive coverage of claims not set within the policy, which could create material solvency risks in the market).

Finally, on 02-04-2020, through its statement on dividends distribution and variable remuneration policies in the context of COVID-19, and following its statement of 17-03-2020, EIPOA urged (re)insurers to temporarily suspend all discretionary dividend distributions and share buy backs aimed at remunerating shareholders. This approach should be applied by all (re)insurance groups at consolidated level and also regarding significant intra-group dividend distributions and similar transactions, whenever these may materially influence the solvency or liquidity position of the group or of one of the undertakings involved. The materiality of this impact will be monitored jointly by the group supervisors and each of the (re)insurers in question.

EIOPA stated that it also expected that (re)insurers review their remuneration policies and practices, to ensure that they reflect prudent capital planning and are consistent with the current economic situation. In such context, the variable part of remunerations should be set at a conservative level and its postponement should be considered.

(Re)insurers that consider themselves legally required to pay out dividends or large amounts of variable remuneration should explain the underlying reasons to their National Competent Authority.

ASF

On 18-03-2020, the ASF issued an Information Note on Actions and Recommendations in response to the developments relating to the Coronavirus (COVID-19), with reference to the EIOPA statement dated 17-03-2020, essentially replicating its message. Please note, however, that the ASF goes a bit further:

- Extending to **pension fund management companies** the need to be prepared to implement the necessary measures to ensure **business continuity** and maintain services provided to participants and beneficiaries;
- Providing specifically, in relation to the **pension fund sector**, in particular for funds that finance **defined benefit plans**, that members should safeguard the **need to make special contributions** to remedy deficits resulting from the unusually adverse situation in the financial markets, taking into account the specific features of the plans and the population covered.

The ASF also issued, on 24-03-2020, an Information Note on the EIOPA Recommendations on **Flexibility in Reporting Requirements for Insurance Companies**, noting that these **will be followed by the ASF**, and that the ASF will continue to closely monitor market developments and the measures implemented by each operator, with a view to protecting policyholders, insured persons and beneficiaries and to preserving financial stability.

It is now expected that, in the very near future, the ASF will develop and implement the principles contained in the above documents through additional and more detailed instructions on the measures applicable to the insurance sector.

An example of this implementation is Circular Letter 2/2020 of 30-03-2020, sent to **insurers** on that date, on flexibilizations measures and recommendations under the exceptional circumstances regarding the Coronavirus - COVID-19 pandemic outbreak, in which the ASF:

- On **general aspects**, recommends that insurers take into account the need to amend continuity plans dynamically, in order to mitigate risks arising from the current operational restrictions in current activity, to ensure business continuity, including where external contractors or suppliers are constrained (reporting to the ASF, in any case, which measures have already been implemented or planned and will have a significant impact on underwriting and product distribution) and to contain their financial losses and those attributable to policyholders and beneficiaries, always bearing in mind the need to be aware of potential reputational risks;

- On **prudential aspects**, recommends that insurers restrict all actions under the capital management policy involving decapitalisation, especially dividends distribution (which the ASF recommends avoiding if insurers anticipate risk of deterioration in their financial conditions which could, in 2020, lead to the risk of failing to meet capital and solvency requirements) and intra-group financing operations; the ASF also notes the precautions to be taken with regard to requests for early redemptions/repayments submitted to them, and considers it essential for companies to inform their customers of the potential losses caused by redemptions/repayments, particularly in insurance without associated guarantees;

- On **behavioural aspects**, the ASF advises flexibility and attention on the part of insurers to the vulnerable situations of their customers, namely with regard to:

  - Potential delays in premium payments through no fault of their own;
  - Possibility of sending motor insurance cards by email and presenting them digitally;
  - Development of solutions which defend the interests of those injured, in cases where suppliers are unavailable and this could prevent swift settlement of the claim;
  - Encouraging prior contact with the policyholder or the person insured under products that allow switching (if this is implemented), in order to give full clarification of the current exceptional situation;
  - Encouraging prior contact with a view to full clarification for policyholders who have requested redemption of life insurance products, with particular emphasis on the penalties to be expected;
  - Providing clear and timely information to customers on the contractual terms and scope of coverage for their products, especially with regard to changes resulting from the COVID-19 outbreak and exclusions, ensuring consistent treatment of similar cases.

- On **supervisory actions** and in addition to the discussion of a general need for flexible deadlines, it sets the deadline of 20 business days for insurers to respond to complaints or to the ASF regarding complaints submitted via ASF and states that on-site actions for prudential and market conduct supervision, scheduled for the next few months, are suspended/cancelled in order to reduce the operational effort for responding to requests;

- On **data reporting**, in addition to making reference to the standards approved for all trading companies, particularly the extension of the deadline for annual general meetings, it confirms, in line with the EIOPA recommendations, a new extended timetable for reporting accounting information and data for market conduct supervision as required by Article 3(e) and (f) of Regulatory Standard 8/2016-R and information required under the Solvency II framework, also noting in relation to the 2020 ORSA that insurers and insurance groups should consider performing an extraordinary self-assessment, when they are able to take the most immediate effects of the pandemic on this financial year into account;

- Finally, in as far as concerns **additional measures and extraordinary data reporting**:

  - In addition to the extraordinary request for information issued by the ASF to all insurers with the aim of assessing the immediate impact of the pandemic, ASF notes that it will request a set of data from insurers and insurance groups, in order to monitor the developments of the financial situation in the current context and various aspects of market conduct;
  - Insurers and insurance companies should immediately notify the ASF if they identify major operating difficulties or in meeting current legal and regulatory requirements;
  - It notes that insurers and insurance companies may, in order to deal with solvency and financial situation, consider the prudent use of arrangements and measures available under the RJASR, which are not already in use (namely volatility adjustment, matching adjustment, supplementary own funds, specific company parameters), also announcing that it would be amending regulations to again allow submission of new requests for temporary reduction in technical provisions and temporary adjustment to the term structure of relevant risk-free interest rates.

On 01-04-2020, the ASF, driven by the same concerns and operation vectors identified above, gave instructions to **insurance brokers/intermediaries**, reminding them that, under the legislation regulating the state of emergency in Portugal, the Government included insurance as an essential service, which makes it important for market operators to be flexible in the treatment of customers. Specifically, the ASF:

– Aims to encourage the adoption of processes to ensure **business continuity and streamlined actions with insurers and their customers**, promoting the use of distance communications, particularly by phone or online, where possible and recommended, and further efforts to comply with health and safety rules, when providing assistance in person;

– Recommends, in customer relations, that insurance brokers ensure that **all communications are clear and informative** and aim to tailor these to the recipient's profile, and, especially, be clear about the changes to contractual terms for the respective products resulting from the pandemic and to the scope of coverage, particularly in terms of exclusions, in order to ensure consistent treatment in similar cases;

– Considers it essential that **brokers guarantee a minimum service level** in relation to potential lack of coverage for the customer, noting, as applicable to each broker: a) timely placement of risks in insurers; b) collection of and sending receipts for premiums to customers; and c) accountability to insurers.

– It highlights the importance of **timely claims management**, in order to: a) give insurers all elements required for settlement; and b) pay policyholders compensation and redemptions due;

– **Tailor supervisory arrangements** to the response capacity required in the current context, using the following approaches:

  - Flexibility in deadlines for responding to notifications directed to brokers, with the

exception of specific requests related to the current exceptional situation;
- Suspension/cancellation of on-site supervisory actions scheduled for the next few months, with a view to reducing the operational effort for responding to requests;
- Extending the data reporting deadlines set out in Regulatory Standard 15/2009-R of 30 December, for (re)insurance intermediaries, to advance the required regulatory implementation.

When preparing financial statements, where possible and provided that these have not already been approved, the ASF also suggests considering the provisions of Accounting and Financial Reporting Standard (NCRF) 24 - Events after the reporting period, in relation to the impact of the Coronavirus/COVID-19 pandemic.

– It requests that brokers **communicate any critical situations**, where it is not possible to ensure continued services, detailing the relevant circumstances and the measures taken, particularly the coordination with insurers for continued customer support and the information sent to them.

Finally, on 02-04-2020, in order to minimize the negative impact on the financial situation of **pension fund management companies and the pension funds managed by them** and to ensure protection of the interests of pension fund members and beneficiaries, the ASF issued a Circular Letter to pension fund management companies, in which:

- On **general aspects**, it recommends that management companies take into account the need to amend continuity plans dynamically, in order to mitigate risks arising from the current operational restrictions in current activity, to ensure business continuity, including where external contractors or suppliers are constrained (reporting to the ASF in any case the measures already implemented or planned), and to contain their financial losses and resulting pension fund losses, always bearing in mind the need to be aware of potential reputational risks and the expectations involved.

- On **prudential aspects**, recommends that pension fund management companies regularly monitor their financial position, liquidity and solvency, and those of the pension funds they manage, in particular the conditions required to meet requests for repayments for individual memberships in open pension funds without disruption. It also recommends restriction of all actions under the capital management policy involving decapitalisation of the management company, especially dividends distribution (which the ASF recommends avoiding if management companies anticipate risk of deterioration in their financial conditions which could, in 2020, lead to the risk of failing to meet solvency margin requirements) and intra-group financing operations; the ASF also notes the precautions to be taken with regard to requests for early repayments of Retirement Savings Scheme (PPR) pension funds, and considers it essential for management companies to inform their members of the potential losses caused by repayments, given that a proper policy on treatment of members enables a good reputation to be maintained, both of the pension fund management company and of a stable financial situation for the pension funds they manage, particularly PPR pension funds;

- On **behavioural aspects**, the ASF advises flexibility and attention on the part of management companies to the vulnerable situations of their members and beneficiaries, particularly with regards to:

- Clear and informative communications, tailored to the profile of members and beneficiaries;
- Potential delays in contribution payments by pension fund contributors through no fault of their own;
- Encouraging prior contact with members or beneficiaries in pension plans that allow switching (if this is implemented), in order to give full clarification of the current exceptional situation;
- Taking special care in communicating changes in pension fund investment policies arising from this exceptional situation to members and beneficiaries, in view of its relevance.

In any case, it is clear that the intended flexibility (*i*) does not prevent pension fund management companies meeting their legal reporting requirements on a timely basis, that (*ii*) the management companies must continue to ensure the required diligence in meeting the obligations inherent to effective application of policies, procedures and controls for the prevention of money laundering and terrorist financing, using a risk-based approach, and that (*iii*) they must disclose their contingency plans, on their website or on the website used by them, in order to inform beneficiaries and participants on the measures taken that could affect their contractual relations and the services provided.

- On **supervisory actions** and in addition to the discussion of a general need for flexible deadlines, it sets the deadline of 20 business days for management companies to respond to complaints or to the ASF regarding complaints submitted via ASF and states that on-site actions for prudential and market conduct supervision, scheduled for the next few months, are suspended/cancelled in order to reduce the operational effort for responding to requests;

- On **data reporting**, in addition to making reference to the standards approved for all trading companies, particularly the extension of the deadline for annual general meetings, it sets-forth a new extended timetable for reporting accounting information and data for market conduct supervision as required by Regulatory Standard 18/2008-R of 23 December and Regulatory Standard 8/2016-R.

- Finally, in regarding **additional measures and extraordinary data reporting**, it notes that:

  - management companies must immediately notify the ASF, especially to ensure the interests of members and beneficiaries of the pension funds managed by them, of the following situations:

    - Serious disruptions to activity;
    - Serious disruptions to the operation of a pension fund they manage;
    - Events which affect the financial situation or liquidity of the pension funds;
    - Events which have a relevant negative effect on the reputation of the management company or any of the pension funds they manage, so that the need to take stability protection measures can be assessed, particularly in terms of public communication;
    - Other situations to be identified when notifying the ASF of the report to be submitted;

- After the issue of this Circular Letter, management companies will be asked for an extraordinary report which will cover the financial situation, liquidity and solvency of the pension funds they manage, in order to identify the impact of the current exceptional circumstances of the financial markets on pension funds and the interests of the members and beneficiaries these cover and to monitor the financial situation of pension funds and the group memberships that finance defined benefit plans.

XIII.E. Obligations and acts before regulators/supervisors in the banking sector

EUROPEAN CENTRAL BANK AND EUROPEAN BANKING AUTHORITY

On 20-03-2020, the ECB announced further measures to ensure that its directly supervised banks can continue to fund the real economy amid the contingency framework caused by the outbreak of COVID-19. In particular, it is envisaged to provide greater flexibility in the treatment of NPLs, allowing banks to benefit from guarantees and moratoriums provided/established by public authorities to tackle the current contingency situation.

When implementing these measures, the ECB will be flexible in the classification of debtors as "unlikely to pay" when banks activate state guarantees granted in the context of the COVID-19 pandemic. In the case of state guarantees, the ECB will give these NPL preferential treatment in terms of supervisory expectations about loss provision. Finally, the supervisor will deploy flexibility when discussing with the banks the implementation of NPL reduction strategies, taking into account the extraordinary nature of the current market conditions. It is also recommended that banks, when applying accounting standards, avoid procyclical assumptions in their models in order to tackle excessive volatility of loss provisioning and that the banks should adopt IFRS 9 transitional rules.

On 12-03-2020, the ECB announced a first wave of flexibility measures, including relief measures for capital requirements on banks.

These measures seek to allow banks to operate below the required minimum capital requirements. These capital requirements relate: (*i*) to the minimum own funds requirements (*Pillar 2 Guidance*); (*ii*) to the capital conservation buffer; and (*iii*) to the liquidity coverage ratio. Banks will also be allowed to partially use capital instruments that do not qualify as Common Equity Tier 1 (*CET1*) capital, for example Additional Tier 1 or Tier 2 own funds instruments, to meet the Pillar 2 Requirements (*P2R*).

In addition, the ECB is also discussing individual measures with banks, in relation to adjusting timetables, processes and deadlines. For example, the ECB will consider rescheduling on-site inspections and extending deadlines for the implementation of remedial actions stemming from recent on-site inspections and internal model investigations. Extending deadlines for certain non-critical supervisory measures and data requests will also be considered. In light of the operational pressure on banks, the ECB supports the decision by the EBA to postpone the 2020 EU-wide stress test and will extend the postponement to all banks subject to the 2020 stress test.

Meanwhile, on 25-03-2020, the EBA issued a statement on the need for financial institutions to adopt consumer protection measures and on the functioning of payment services, in the current contingency situation.

Through this publication, the EBA demonstrates its support for the measures taken and proposed in national and EU level in granting payment delays or suspensions, noting the importance of proper accounting treatment on this matter. Thus, EBA clarifies that generalised payments delays due to legislative initiatives should not lead to any automatic classification in default or unlikeliness to pay, also stating that there has to be a weighting in distinguishing between borrowers whose creditworthiness would not be significantly affected in the long term, and those who would face a more significant impact.

The EBA also highlighted that financial institutions should act in the interests of consumer, in particular with regard to the temporary measures applied to housing loans, mortgages credit and consumer credit, and must take special consideration when applying additional fees to consumers and to cross-selling activities in this context.

Regarding payment services, the EBA: (*i*) recommends the use of contactless payment methods and increasing, where possible, the amount available to a maximum of EUR 50 for these transactions; (*ii*) encourages consumers and merchants to take sanitary measures when paying in-store; and (*iii*) notes the importance of the adoption, by consumers, of fraud-protection measures when online shopping, in view of the increased sales volume.

Finally, the EBA decided to extend the deadlines of public consultations by two months, to postpone public hearings and run them remotely and to extend the remittance dates for funding plans data and data for the Quantitative Impact Study, based on December 2019 data.

BANCO DE PORTUGAL
[PORTUGUESE CENTRAL BANK]

On 16-03-2020, Banco de Portugal issued Circular Letter No CC/2020/00000017, which envisaged flexibility measures regarding regulatory and supervisory requirements to relieve the contingency situation resulting from the COVID-19 pandemic.

The measures adopted follow from those already announced by the ECB and by the EBA and seek to ensure that credit institutions continue their role of ongoing funding of the real economy, at a moment when the economic consequences of the COVID-19 pandemic are becoming clear.

Thus, the measures now taken are essentially as follows:

- **Use of capital buffers**: Banco de Portugal will, in line with the ECB's decision for significant institutions, allow institutions under its direct supervision to operate temporarily with a lower level of own funds than recommended (*Pillar 2 Guidance*) and of combined buffer of own funds, as well as liquidity levels lower than required for liquidity coverage. This flexibility may only be used by credit institutions to support the economy and cannot offset potential increases in dividend distribution or variable remuneration;
- **Suspension of stress tests**: in line with the EBA's decision for significant institutions, Banco de Portugal has suspended ongoing stress tests for less significant institutions;
- **Postponement or cancellation of inspections**: Banco de Portugal has decided to suspend or postpone all inspections in the areas of behavioural and prudential supervision and of prevention of money laundering and terrorist financing, except in the most critical situations or where it is possible to continue to carry out work remotely;
- **Rescheduling SREP performance:** new dates for the SREP are under review;
- **Postponement or cancellation of reporting**: reporting obligations to Banco de Portugal are suspended or the reporting deadline is postponed or the current contingency situation is acknowledged to constitute reasonable cause for potential non-compliance with agreed deadlines. The details of the particular measures applicable

to various types of reporting are stated in the Circular Letter;

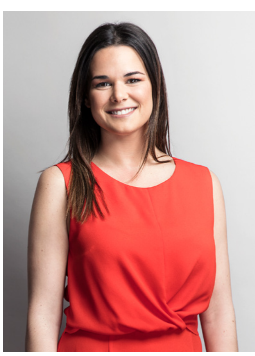
- **Extension of deadline for handling complaints (measures adopted for period between 16-03-2020 and 20-04-2020)**: the deadline for institutions to respond to complaints submitted by customers directly to Banco de Portugal changes from 20 to 30 working days; and the deadline for institutions to respond to requests for additional information from Banco de Portugal when assessing complaints changes from 3 to 10 working days;
- **Flexibility of requirements for opening an account by videoconference**: Banco de Portugal accepts the submission of expired identification documents, under the terms and limits set out in Decree-Law No 10-A/2020 for public authorities.

Banco de Portugal's Circular Letter also reiterates the need for credit institutions to: (*i*) ensure measures to prevent workers' safety; (*ii*) adopt measures to ensure the business continuity and contain financial losses; and (*iii*) immediately report to the Banco de Portugal the occurrence of events with a significant negative impact on the institution.

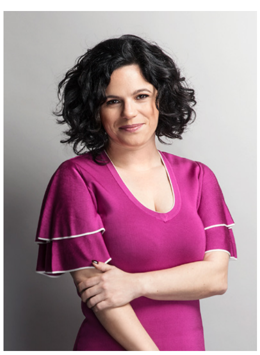
AUTHORS

Magda Viçoso
Partner

Margarida Torres Gama
Managing Associate



Maria Cortes Martins
Associate



Maria Soares do Lago
Managing Associate

Member
LexMundi
World Ready

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LISBOA
Rua Castilho, 165
1070-050 Lisboa
T +351 213 817 400
F +351 213 817 499
mlgtslisboa@mlgts.pt

PORTO
Avenida da Boavista, 3265 – 4.2
Edifício Oceanvs
4100-137 Porto
T +351 226 166 950 - 226 052 380
F +351 226 163 810 - 226 052 399
mlgtsporto@mlgts.pt

FUNCHAL
Av. Arriaga, n.º 73, 1.º, Sala 113
Edifício Marina Club
9000-060 Funchal
T +351 291 200 040
F +351 291 200 049
mlgtsmadeira@mlgts.pt

mlgts.pt

ALC ADVOGADOS

LUANDA
Masuika Office Plaza
Edifício MKO A, Piso 5, Escritório A/B
Talatona, Município de Belas
Luanda – Angola
T +244 926 877 476/8/9
T +244 926 877 481
geral@alcadvogados.com

alcadvogados.com

HRA ADVOGADOS

MAPUTO
Avenida Marginal, 141, Torres Rani
Torre de Escritórios, 8.º piso
Maputo – Moçambique
T +258 21 344000
F +258 21 344099
geral@hrlegalcircle.com

hrlegalcircle.com

MdME LAWYERS

MACAU
Avenida da Praia Grande, 409
China Law Building
21/F and 23/F A-B, Macau
T +853 2833 3332
F +853 2833 3331
mdme@mdme.com.mo

HONG KONG
Unit 2503 B
25F Golden Centre
188 Des Voeux Road
Central, Hong Kong
T +852 3619 1180
F +853 2833 3331
mdme@mdme.com.mo

Foreign Law Firm

mdme.com.mo