

MAY 13TH, 2020

## COVID 19

### EXCEPTIONAL REGIME OF FINANCIAL REBALANCE OF LONG-TERM ADMINISTRATIVE CONTRACTS

1. Based on the last two State of Emergency declarations, on the 30<sup>th</sup> of April the Decree-Law 19-A/2020 was published, which contains, regarding long-term administrative contracts, two essential rules, concerning the reestablishment of the financial balance:
  - a) The contractual clauses and normative provisions that foresee the right to the reestablishment of financial balance or the compensation for breaches of use in any contract are suspended. This suspension shall be temporarily limited and will only apply between the 3<sup>rd</sup> of April and the date of termination of the State of Emergency. In practical terms, this means that private contractors may not exercise the right to restore financial balance or to compensation for breaches of use due to events occurring during the aforementioned period;
  - b) In situations where the right to compensation for loss of use is foreseen or where the occurrence of a pandemic represents a foundation that may give rise to a claim to restore financial balance, these compensation and restoration can only be carried out by **(i)** extending the period of the execution of provisions; or **(ii)** extending the duration of the contract, being prohibited, regardless of any contractual clause or rule to that effect **(i)** the revision of prices or **(ii)** the assumption, by the contractor or a public partner of a duty to provide to the counterparty.
2. In the case of long-term execution contracts which constitute concessions in the road sector and are subsumed to a public-private partnership, the rules are as follow:
  - a) The grantor or the sub-contractor shall reduce or suspend, temporarily and as a matter of urgency, the obligations of the dealer or sub-dealer, taking into account, in particular, updated traffic levels consistent with reality and the minimum services to be guaranteed for the proper safeguarding of road safety;
  - b) In cases where the remuneration of dealers or sub-dealers comes from payments from the grantor or sub-contractor, they shall, unilaterally, determine the reduction

of the payments due, to the extent of the reduction or suspension of the dealers or sub-dealers obligations.

3. Within the scope of public-private partnership contracts, any acts, measures or decisions of the public partner adopted in the context of the Covid 19 pandemic and likely to originate financial rebalance shall be exempt from the procedure and formalities prescribed in article 20 of Decree-Law 111/2012 of the 23<sup>rd</sup> of May.
4. Finally, compensation is excluded for the sacrifice of damage resulting from acts regularly performed by the State or another public entity, in the exercise of powers conferred by public health and civil protection legislation, or in the context of the State of Emergency, which consists, for this purpose, a cause of force majeure (lawful acts of public authority which, under normal circumstances, would be liable to compensation).
5. The rules above will cease to apply when the WHO determines that the epidemiological situation of the SARS-Cov-2 virus and the COVID-19 disease do not constitute a pandemic, without prejudice to the effects provided for in this legislation which, by their nature, must be produced or come into effect after such termination.

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