

**MARCH 2020**

## **STATE OF EMERGENCY**

### **LEGAL FRAMEWORK, ITS EFFECTS AND MEASURES OF IMPLEMENTATION**

The State of Emergency was declared on the last 18th March by Decree of the President of the Republic no. 14-A/2020.

It covers the entire national territory, is based on the situation of public calamity caused by the COVID-19 pandemic and requires exceptional measures to be taken in response to the health and public health emergency the country is facing.

We note the most important aspects of the legal framework of the declaration of the State of Emergency, its effects and the concrete measures taken by the Government for its implementation, through the Decree of the Presidency of the Council of Ministers No. 2-A/2020 of the 20<sup>th</sup> March.

#### **I. The legal framework of the State of Emergency**

- a) The State of Emergency is an exceptional state which allows for the partial suspension of the exercise of certain rights, freedoms and guarantees insofar as the strictly necessary, subject to the principle of proportionality;
- b) It holds only for as long as there is a need to safeguard the rights and interests to be protected, lasts for up to 15 days with possible renewals;
- c) Anyone who fails to comply with the measures set out in the declaration of the State of Emergency incurs in a crime of disobedience, punishable by imprisonment for up to 1 year or a fine of up to 120 days, which will be doubled in the case of qualified disobedience.
- d) The rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of criminal law, the defendants' right of

defence and freedom of conscience and religion shall not be suspended and shall remain untouched in any state of exception.

- e) Citizens shall also retain in full their right of access to the courts to defend their rights, freedoms and guarantees, which have been damaged or threatened by any unconstitutional or illegal measures.

## II. Decree of the President of the Republic no. 14-A/2020

The Declaration of the State of Emergency sets out the following:

1. The State of Emergency shall have a planned duration of 15 days, **starting at 00:00 on 19.03.2020 and ending at 23:59 on 02.04.2020**, without prejudice of possible renewals.
2. It provides for the possibility of **partial suspension of certain rights, freedoms and guarantees**, with special emphasis on the following:
  - i. **Right of movement and settlement in any part of the national territory** - possibility to adopt compulsory confinement, the establishment of sanitary fences and the prohibition of unjustified movement and stay on the public highway;
  - ii. **Right of assembly and demonstration** - measures may be imposed to limit or prohibit meetings or demonstrations that enhance the transmission of the virus;
  - iii. **Right to international movement** - with the introduction of border controls on persons and goods, without prejudice of possibly taking, on the other hand, measures necessary for the international movement of essential goods and services;
  - iv. **Right of ownership and private economic initiative** - possible requisition order of services and use of movable and immovable property, mandatory opening, operation and functioning of companies and

establishments or, on the contrary, their closure or limitations of activity (e.g. changes to quantities, prices and nature of the goods);

- v. **Worker's rights** - the possibility to require service from workers of public or private entities, regardless of the place, time and other conditions of their employment, in the areas of health, civil protection, security and defence, treatment of patients, prevention and fight against the spread of the epidemic, as well as those necessary for the production, distribution and supply of essential goods and services, for the functioning of sectors vital to the economy and for the operation of the necessary infrastructures; immediate suspension of the right to strike insofar as such strikes may jeopardise the functioning of vital infrastructure, such as health and the production, and the supply of goods and services essential to the population.

### III. Decree of the Presidency of the Council of Ministers No. 2-A/2020

By Decree of the Presidency of the Council of Ministers No. 2-A/2020, of the 20<sup>th</sup> March<sup>1</sup>, **with entry into force at 00:00 hours on 22.03.2020**, the terms of the exceptional measures to be implemented during the period of the declared state of emergency were established, the following being those that we consider more relevant:

- i. Only patients infected with the COVID 19 virus, as well as citizens under active surveillance by the health authorities, are subject to **mandatory confinement** under penalty of a crime of disobedience;
- ii. All other citizens (with the exception of those over 70 years of age, those immuno-compromised and those suffering from a chronic illness, to whom a special duty of protection applies) are subject to a general duty of home retreat, and may only circulate in public spaces and streets, or similar, for a number of purposes, of which the following stand out:
  - Purchase of goods and services;
  - Travel for the purpose of performing professional activities or similar;
  - Job search or reply to a job offer;

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<sup>1</sup> Hereinafter "Decree no. 2-A/2020".

- Travel to post offices, bank branches and insurance brokers or insurance companies;
  - Return to personal home;
  - Other activities of a similar nature or for other reasons of force majeure or imperative need, provided they are duly justified;
  - Private vehicles may travel on public roads to carry out all the above activities or for refuelling at gas stations.
- iii. Obligation on all employers to adopt remote working from home, where the functions so allow;
- iv. Obligation to **close** facilities and establishments referred to in Annex I of Decree no. 2-A/2020, available for consultation [here](#);
- v. Obligation to **suspend** all **retail trade activities**, with the **exception** of those providing basic necessities or other goods considered essential in the present circumstances, which are listed in Annex II of Decree no. 2-A/2020, also available for consultation [here](#);
- vi. An **exception** is also made for establishments which maintain their **activity solely for the purposes of home delivery** or making goods available **at the door of the establishment** or at the **gate**, with a **prohibition of access to the interior**;
- vii. **Non-suspension of wholesale establishments**;
- viii. Mandatory **suspension of service activities** in establishments open to the public, except those listed in Annex II of Decree 2-A/2020;
- ix. The **closure of premises and establishments** determined by this legal framework **does not constitute basis for terminating non-residential rental contracts** or other forms of exploitation of property;
- x. **There is no obligation of suspension** for the following services or activities:

- catering in **canteens or cafeterias** in regular operation and other collective catering units in operation under a **contract of continuous performance**;
  - **restaurants** and similar establishments **which cook exclusively for off premises consumption** or for home delivery (with exemption of license for such activity and with the power to determine it to their employees);
  - **e-commerce**, or **service activities** that are provided **remotely**, without contact with the public, or provided through an **electronic platform**;
  - **retail trade** or **service activities** located along the **highway network** and **inside airports** and **hospitals**;
- xi. The possibility of **adapting the above mentioned measures** as needs arise, is provided for, and the opening of establishments referred to in Annex I of Decree no. 2-A/2020 may be determined; allowing other retail trade activities or the provision of services, including catering, in addition to those provided for in Annex II of Decree no. 2-A/2020; or, on the contrary, limiting or suspending the exercise of the activities provided for in Annex II, if they are dispensable or undesirable in the context of fighting the contagion;
- xii. Small retail establishments and those which provide **local services** may, exceptionally, apply before the local civil protection authority for permission to function, upon reasoned request;
- xiii. **Retail trade establishments** or those **providing services** which maintain their activity shall comply with the following safety and hygiene rules:
- In physical **establishments**, ensure a **minimum distance of two metres between people**, a stay for as long as strictly necessary and the prohibition of consumption inside the establishment, without prejudice to the rules laid down in Order no. 71-A/2020 of the 15<sup>th</sup> March;

- A **prestação do serviço** e o **transporte de produtos** devem ser efectuados mediante o respeito das necessárias regras de higiene e sanitárias definidas pelas Direcção-Geral da Saúde; The **service must be provided and the products transported** in compliance with the necessary hygiene and health rules laid down by the Directorate-General for Health;
  
- xiv. In regard to **public services**, *lojas de cidadão* are closed, with face-to-face appointments still happening as well as the provision of those services through digital means;
  
- xv. Additional **measures to be taken in the specific areas** of health, interior administration, national defence, justice, transport, agriculture, sea, energy and environment shall be established by the members of the Government responsible for those areas;
  
- xvi. It should also be noted that during the validity of this Decree, **licences and administrative authorisations** will remain valid irrespective of their expiry date.

We will be updating this information as new legislation is published that changes or adds to the abovementioned.

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**PARES | Advogados** is available to provide more detailed information on the legal framework of the State of Emergency that will suit the specific needs of each client, being able to offer all necessary support on this matter.

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