



“THE MAJOR ROLE OF **COMPLIANCE** IN THE CONTEXT OF **COVID-19’S** ” **PANDEMIC**

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A part from the obvious questions related with public healthcare, COVID-19’s pandemic presents countless challenges to the companies. These exceptional times that we are living demand from the companies a special ability to adapt to these new circumstances and Compliance can be and shall be the ideal management tool for the companies to surpass the obstacles created by the COVID-19’s pandemic and allow the companies to recover their activity.

Besides their own contingency

plans to face COVID-19’s pandemic, each company has to consider and mitigate significant risks, for example: How is COVID-19’s consequences affect the company’s ability to fulfil its contractual obligations? Can the company use «force majeure» clauses in existing contracts to mitigate its risks and losses? What are the conditions foreseen in the termination clauses in the existing contracts? What are the likely impacts of the pandemic in the company’s clients and suppliers? What strategies can the company adopt to mitigate the risks of contractual breaches and losses? Can the abnormal change of circumstances justify the termination or

modification of the existing contracts? How can the company react to judicial or legislative orders to suspend their activities? What are the legal and contractual remedies available to the companies?

In Portugal, the State of Emergency has been declared on March 18, 2020 for a 15-day period which will be likely renewed for at least an additional 15-day period counting from April 2. Subsequently, the Portuguese Government issued the rules that are in force during the State of Emergency and has also taken several measures to support the economy in the context of the crisis imposed by the impact of COVID-19, including, among others, a

simplified Layoff procedure in order to support job retention and to avoid dismissals and a 6-month suspension on rents for closed commercial establishments.

Apart from these obstacles created by «external» factors, COVID-19's pandemic also presents significant challenges related to Corporate Governance of the companies. The need to adopt measures to protect stakeholders and ensure the prosecution of the companies' interests has never been so relevant as in the current context.

The emerging corporate challenges in the face of the epidemic crisis may be placed at two distinct levels: the first level concerns the strengthening of the duties of directors; and at a second level, the flexibility and adaptation of corporate life to the best practices emerging in this context.

As a result of their duties and responsibilities, the company's management bodies have special duties of care in managing the risks inherent to the COVID-19 threat. The Companies will have to ensure the promotion and adoption of special contingency plans that allow the security of their employees, partners, clients, suppliers and other stakeholders and, simultaneously, continue their activity. These contingency plans must be approved by the management bodies in strict compliance with the guidelines of the health authorities and local authorities as well as implemented and communicated to the entire structure of the Company as quickly as possible. On the other hand, the



monitoring, review and possible application of other measures is particularly relevant to mitigate any risks of evolution and contagion of COVID-19 and to reduce potential economic and financial threats that may affect the Company's activity or that of third parties.

Without prejudice to this, decision making, and respective communication must be duly documented, based on criteria of corporate rationality under penalty of responsibility of the management body for the absence or lack of adoption of these measures.

With regard to the second plan, in view of the approximation of the legally established dates for the purposes of holding annual general meetings, Decree-Law

no. 10-A/2020 of March 13th was published, extending until June 30th, 2020 the deadline for holding general meetings which, by legal or statutory imposition, should be held in the meantime. In cases where general meetings cannot be postponed, the Companies Code provides for the possibility of holding meetings (of the general meeting and of the management bodies in general) by telematic means, provided that the respective articles of association (which may always be amended) do not prohibit this. In this sense, the use of these alternative means should be considered on a case-by-case basis, since the means and resources used must ensure the reliability of the communications.