



STATE OF EMERGENCY - COVID 19

WHAT YOU NEED TO KNOW

With the possibility of a State of Emergency being declared in the context of the Covid-19 pandemic, SRS Advogados has drawn together an overview of what this represents and the limitations it implies. The State of Emergency is foreseen and regulated under the Constitution of the Portuguese Republic (“CRP”) and Law No. 44/86, of 30 September, which establishes the State of Siege and State of Emergency (RESEM). The specific measures and limitations must be set out in the Diploma that decrees the State of Emergency.

1. How does the law defines State of Emergency?

- The State of Emergency, as well as the State of Siege, are states of exception that can only be declared in cases of effective or imminent aggression by foreign forces, of serious threat or disturbance to the democratic constitutional order or of public calamity (arts. 19/2 of the CRP and 1/1 of RESEM), and allow the suspension or restriction of certain citizens' rights, freedoms and guarantees, to the extent necessary to contain the threat.
- The State of Emergency is declared, in place of a State of Siege, when the assumptions referred to above are less serious (art. 19/3 of the CRP).
- Its declaration and execution must respect the principle of proportionality and be limited, in particular as to its extent, duration and means used, to what is strictly necessary for the prompt restoration of constitutional normality (arts. 19/4 of the CRP and 3/1 of RESEM).

- The State of Emergency can be declared in relation to all or to part of national territory, depending on the geographic scope of its causes, and it can only be declared in the area where its application is strictly necessary (arts. 19/2 of the CRP and 4 of RESEM).
- The declaration of the State of Emergency gives the authorities the power to take all necessary and appropriate measures for the prompt restoration of constitutional normality (art. 19/8 of the CRP), specifying, where appropriate, the degree of strengthening of the powers of the civilian administrative authorities and the support to be provided by the armed forces (art. 9/2 of RESEM).

2. What measures can be taken and who is legally responsible for implementing them?

- The law provides only for the limits of the measures to be implemented, giving ample scope for its specific definition (art. 2/2 of RESEM).
- In the case of a health emergency, the measures to be adopted should be particularly restrictive of citizens' mobility and freedom, which may involve quarantine and forced isolation.
- The conditioning or prohibiting of the movement of people and the circulation of vehicles may also be imposed, in which case the authorities have to ensure the necessary means to comply with the provisions of the declaration, particularly with regard to the transport, accommodation and maintenance of the affected citizens (art. 2/2/c) of RESEM).
- Any type of publication, radio and television broadcasts and cinema or theatrical performances may also be suspended, as well of any publications seized, but these measures may not include any form of prior censorship (art. 2/2/d) of RESEM).
- The Government can also appoint commissioners of its choice to ensure the functioning of public institutions, public and nationalized companies and other companies of vital importance in these circumstances (art. 21 of RESEM).
- The declaration of the State of Emergency is of the exclusive competence of the President of the Republic but requires the opinion of the Government and the authorisation of the Assembly of the Republic - or, when the Assembly of the Republic is not meeting, nor is it possible to meet immediately, from the Permanent Commission, whose authorization must (as soon as possible) be confirmed by the Plenary - the Government is the entity that is legally responsible for the implementation of the measures established (art. 17 of RESEM).
- The implementation of the measures in the Autonomous Regions (Azores and Madeira) is ensured by the Representative of the Republic, in cooperation with the Regional Government (art. 20/2 of RESEM).

3. For how long can the State of Emergency be declared?

- The duration of the State of Emergency will be limited to what is strictly necessary to safeguard the rights and interests in question and the restoration of normality, and may not be for more than 15

days, without prejudice to possible renewals of one or more periods with the same time limit (articles 19/5 of the CRP and 5 of RESEM);

- The duration of the State of Emergency is established with reference to the day and time of its commencement and of its termination (art. 5/2 of RESEM).
- The declaration of the State of Emergency is immediately revoked if the circumstances that required its implementation cease to exist (art. 13/1 of RESEM).

4. What are the implications for citizens' rights, freedoms and guarantees?

- The State of Emergency can only establish the suspension or restriction of certain rights, freedoms and guarantees (art. 19/3 of the CRP), and which must be specified in declaration of the State of Emergency (arts. 19/5 of the CRP and 9/2 of RESEM).
- Suspension must always respect the principle of equality and non-discrimination, and must respect the limits established in the law (art. 2/2 of RESEM).
- In no circumstances can the declaration of the State of Emergency affect the right to life, personal integrity, personal identity, civil capacity and citizenship, the retroactive nature of criminal law, the right of defense of defendants and the freedom of conscience and religion (arts. 19/6 of the CRP and 2/1 of RESEM).
- Citizens have the right of access to the courts to defend their rights, freedom and guarantees, that are prejudiced or potentially prejudiced by any unconstitutional or illegal measures (art. 6 of RESEM).

5. What are the implications for companies and workers?

- If mandatory quarantine and/or isolation measures are implemented, companies will have to implement remote working to ensure the continuity of their activities.
- When declaring the State of Emergency, measures to support companies and workers should be established, as was the case upon the declaration of the State of Alert.
- Companies can also consider implementing a temporary reduction of normal working hours or suspension of employment contracts, if strictly necessary to ensure the viability of the company and the maintenance of jobs in a crisis situation of the business, or even temporary closure or a reduction of activity.

6. Will there be changes to the constitutional rules on the competence and functioning of sovereign bodies (President of the Republic, Government, Assembly of the Republic or Courts?)

- No. The declaration of the State of Emergency cannot affect the application of the constitutional rules relating to the competence and functioning of sovereign bodies, or the rights and immunities of the respective persons/entities (arts. 19/7 of the CRP and 3/2 of RESEM).

7. What happens to those who do not comply with the measures of the declaration of State of Emergency?

- Whoever fails to comply with the measures established in the declaration of the State of Emergency will be incurring a crime of disobedience (art. 348 of the Penal Code), punishable with imprisonment for up to 1 year or with a fine of up to 120 days. (art. 7 of RESEM).
- In the case of a crime of qualified disobedience, the sentences will be doubled, with a prison sentence of up to 2 years and a fine of up to 240 days.

This Information Note is intended to be distributed among customers and colleagues, and the information contained therein should not be used for any other purpose or reproduced, in whole or in part, without the express authorization of SRS Advogados. If you wish to obtain further clarification on this matter, contact us: marketing@srslegal.pt

