

NEW CORONAVÍRUS

Legal aspects related
to the economic
impacts generated by
its spread.

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ADVOGADOS

SUMMARY

01. INTRODUCTION	02
02. ADMINISTRATIVE & REGULATORY	03
03. ENVIRONMENTAL & SUSTAINABILITY	06
04. CONSUMER & PRODUCT LIABILITY	09
05. CONTRACTS	15
06. REAL ESTATE	16
07. INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT	18
08. RESTRUCTURING & INSOLVENCY	20
09. DISPUTE RESOLUTION	22
10. CORPORATE LAW/M&A & CAPITAL MARKETS	24
11. LABOR	29
12. TAX	36

INTRODUCTION

Souto Correa Advogados is fully aware of the impact that new coronavirus spread has caused on the economy and, in particular, on the activities of our clients and partners, to whom we offer great sympathy given the seriousness of the current moment.

Within this scenario, despite the impossibility of defining the precise scope of its consequences, please find attached some legal guidelines that aim to contribute to the adoption of emergency measures.

In addition, we take the opportunity to inform you that we have also adopted internal emergency actions, based on expert guidance as well as recommendations from the World Health Organization (WHO) and the Ministry of Health.

It is important to mention that our actions result not only from our responsibility towards the staff members in our office, but also towards the community, seeking to contribute to both prevent and contain the spread of the disease.

All in all, it is important to mention that our structure is prepared to maintain full and complete service to our customers even in the face of full-time remote work, with full compliance with security and privacy information protocols.

We will remain aware of the evolution of the situation, sharing new relevant information and being available to address any questions.

ADMINISTRATIVE & REGULATORY

IMPACTS ON ADMINISTRATIVE CONTRACTS

The pandemic caused by the coronavirus may have an impact on administrative contracts in many ways and the consequences must be addressed on a case-by-case basis in light of the public notice, the administrative contract and the governing laws. Depending on a concrete analysis of the case, the impacts caused by the Coronavirus may lead to an extension of the period for compliance with obligations; a review of prices agreed upon; a suspension of the administrative contract; and even a termination of the contract with the public entity.

This case-by-case analysis is essential to avoid exposing the party to sanctions, which range from a fine to the suspension of contracting with Public Administration institutions. The following are some possible measures to be adopted, which have the support of the governing laws:

Procurement law

- **Postponement** of the execution, conclusion and delivery stages of the object of the contract whenever an exceptional or unpredictable event occurs beyond the control of the parties, which fundamentally changes the conditions of contract performance.
- **Amendment of contract** by agreement of the parties, aiming at maintaining the initial economic-financial balance of the contract in case of force majeure, acts of God or factum principis;
- **Termination of contract** whenever regularly proven act of God or force majeure occurs, which prevents contract performance.

PPP law

- Risks related to acts of God and force majeure may be shared between the parties if there is a clause in the contract to that effect (art. 5, III);

Concession Law

- Events of acts of God or force majeure are hypotheses of exception to the declaration of termination of a concession by the Public Authority due to the interruption of services by concessionaires.

IMPACTS OF THE LAW NO. 13,979/2020 ON THE PUBLIC SECTOR

The Law no. 13,979/2020 promoted important impacts on public practices, which in summary are:

Health: exceptional Authorization to Import Products Without Anvisa Registration

- Importing products subject to health surveillance without Anvisa registration may exceptionally be authorized on behalf of the Covid-19 confrontation, provided that they

are registered by a foreign health authority and provided for in a Ministry of Health act. The Minister of Health has the authority to grant this authorization via administrative act.

Bidding process: waiver of bidding process, use of 'price registry system' and reverse auction (regular or online)

- The acquisition of goods, services and supplies aimed at fighting new coronavirus are waived from a public tender process. This is a temporary waiver, which will apply for the duration of the pandemic;
- Exceptionally, a supplier suspended from participating in public tenders or declared unable to bid can be contracted by Public Authority through waiver of bidding process when is demonstrated that it is the only supplier for a specific good or service to be acquired related to fighting the pandemic;
- The 'price registry system', regulated by Decree No. 7,892/2012, may be used for waiver of bidding process when there are more public entities interested in the acquisition;
- When Public Authority use the award procedure 'reverse auction' (regular or online) for acquisitions related to the new coronavirus during the effects of Law No. 13,979/2020, all the terms related to the procedure will be reduced by half and its appeals will have no suspensive effects.

Bidding process: imposition of penalties

- During the pandemic period, the prescriptive period for imposition of penalties resulting from acquisitions(provided in Law No. 8.666/1993, Law No. 10.520/2002 and Law 12.462/2011) will be not applicable.

DECREE DEFINES NEW ACTIVITIES AND PUBLIC SERVICES AS ESSENTIAL

Law no. 13,979/2020, provides that the measures to deal with the pandemic must safeguard the performance of essential activities and public services. In this regard, it was issued the Decree No. 10,282 defining which are these activities and public services.

On April 29, 2020 it was issued the Decree No. 10,329 that defines new activities as essential activities and public services. Among them, it is necessary to highlight some activities that are regulated and inspected by National Agency of Land Transportation (Antt), Brazilian Electricity Regulatory Agency (Aneel) and National Agency of Petroleum, Natural Gas and Biofuels (ANP):

- Traffic and passenger transportation (interstate and international);
- Cargo transport, storage, delivery and logistic;
- Generation, transmission and distribution of electric power, including: (i) provision of supplies necessary for operation and maintenance of power plants, and transmission and distribution systems; and (ii) construction works necessary for these services;
- Oil production;

- Production, distribution and trading of fuels, biofuels, LPG and derivatives;
- Production, export, import and transport of petrochemicals;
- Production, transport and distribution of natural gas.

Moreover, the Decree provides that the definition of essential activities and public services by the Federal Government does not exclude normative and administrative powers of States, Federal District and Municipalities. However, must be noted the exclusive powers of Federal Government to stablish measures for using of its assets and granting public services.

In addition, must be noted that it will be necessary to coordinate with the authority in charge and adopt a specific rule when it comes about limitations to activities regulated, granted or authorized by Federal Government.

ENVIRONMENTAL & SUSTAINABILITY

Due to new coronavirus, companies may experience environmental issues involving the non-compliance with deadlines established by public authorities or obligations related to the environmental licensing. Difficulties in the supply of goods and equipment or in the provision of services can lead to failures in environmental monitoring, in the presentation of studies, in recovery actions and in the maintenance of equipment, for instance.

If the situation leads to formal non-compliance with environmental legislation or situations that cause environmental degradation, it should be noted that, in Brazil, individuals and legal entities can be held liable for environmental damages and irregularities in three different and separated fields: administrative, civil and criminal.

This means that the same fact causing environmental damage can have consequences in the three aforementioned spheres, independently, both for individuals and for legal entities.

We can mention, for instance, that the operation of an activity in disagreement with obligations established in the environmental license is deemed as an environmental crime and an administrative infraction. In addition to that, if any damage arise from said operation, there may also entail the duty to repair or indemnify the damage under civil liability.

CIVIL LIABILITY relates to the occurrence of an environmental damage and the duty to repair it. Environmental civil liability is strict, joint and several. Strict because it exists irrespectively of fault (negligence, imprudence or malpractice) being necessary only to prove the damage and the nexus of causation (cause and effect link) between the activity and the degradation, i.e., to prove the existence of an action or omission thereof which contributed directly or indirectly to the occurrence of the environmental damage.

The civil liability is also joint and several because it can be sought from anyone who has contributed directly or indirectly to the damage (even if such contribution is due to an omission related to the duty of care). Therefore, even if the environmental noncompliance arises from a contractual breach by a supplier, employee or service provider, the contracting company may come to answer before the authorities.

The company that was demanded to recover the damage has the right of recourse (“direito de regresso”) against others who were also liable (the right to get reimbursement of the costs with remedial measures or the amount paid as compensation from the one responsible for the damage).

Courts have been more strongly adopting the “Full” Risk Theory (“Teoria do Risco Integral”), which does not allow excluding liability due to acts of God or force majeure. For this reason, even if the new coronavirus pandemic comes to be considered a case of force majeure, this fact may not be considered to exclude the liability of the company that holds the commitment before the environmental authority for the environmental damage resulting from its activity, either through action or omission.

ENVIRONMENTAL ADMINISTRATIVE LIABILITY arises from an action or omission that violates the legal rules of use, protection and recovery of the environment. The mere noncompliance with the rule is sufficient to characterize the infraction, which is imposed by the administration, such as state and federal EPAs.

With regard to environmental administrative liability, the Court and the scholars have been defending that it is essential to prove the fault or the intentional conduct to impose penalties, applying what we called subjective liability, consisting of demonstrating the transgressor's recklessness, negligence or malpractice.

The Superior Court of Justice has established the understanding that the rule is the subjective environmental administrative liability, with decisions imposing fine on the cargo carrier of chemical products that caused an accident and not on the cargo owner, for example.

Thus, if a given company is able to demonstrate that the noncompliance of a rule was due to the pandemic, this will be a strong argument to remove administrative liability or, at least, seek to mitigate it by reducing the penalty imposed.

Regarding **ENVIRONMENTAL CRIMINAL LIABILITY**, which main applicable rule is Law no. 9605/98 ("Environmental Crimes Law"), it is possible to have criminal liability for legal entities regardless of the liability of the individuals who would, in theory, be responsible within the company. However, it is common that both individuals (authors, co-authors or participants) and the respective legal entity are denounced for environmental crimes.

Considering the wide range of activities that are deemed as environmental crimes, should any of these actions occur due to the pandemic, the demonstration of the fault of the agent and of its decision-making power, including within the legal entity, will be determining factors to the imposition of liability.

It is essential to be attentive to the various decrees issued by the heads of the executive branch dealing with activities permitted during the pandemic, the services considered as essential and the term suspensions in administrative procedures. In addition to that, it is important to check if there are rules established directly by the environmental agency responsible for issuing the environmental license or authorization in behalf of your company and that provide for the suspension of deadlines for defenses or even for complying with license's obligations. In practice, these matters have not been treating in a uniform way by the environmental agencies across the country.

In this scenario, we bring, as example, measures adopted by some of the important environmental agencies of the country: (i) **IBAMA** suspended, as of March 16, 2020 and for an indefinite period, the deadlines related to the physical and electronic proceedings ongoing therein (Ordinance No. 826/2020, dated March 22, 2020). In addition, the IBAMA's Superintendence in some states are issuing specific guidelines regarding the public service, providing electronic channels for communication; (ii) **CETESB** (State of São Paulo) suspended the deadlines from March 16 to April 30, 2020, due to the temporary cancellation of face-to-face service at its facilities (Decision of the Collegiate Board); (iii) **SEMA and FEPAM** (State of Rio Grande do Sul) had their deadlines suspended upon the issuance of a state decree that suspended, for 30 (thirty) days, the deadlines for the presentation of defenses and appeals in the proceedings ongoing before the state public administration (Decree 55.128, of 19 March 2020).

Furthermore, FEPAM suspended for 30 days the deadlines for presenting documents, reports and conditions under environmental licensing proceedings (Normative Instruction 001, dated March 26, 2020). Such suspensions do not apply to the monitoring activities that are necessary for the quality control of the impacts generated by the installation / operation of projects. Said monitoring activities must be maintained for the businesses that are kept running; (iv) SEAS and INEA (State of Rio de Janeiro) had their deadlines suspended upon the issuance of a state decree that suspended, for 15 (fifteen) days, the deadlines in administrative proceedings before the public administration of the State of Rio de Janeiro, as well as the access to the physical processes' records (Decree No. 47.006, dated March 27, 2020).

Within the Public Prosecutor's Office, the State Attorney General's Offices have been issuing specific rules on the suspension of deadlines in the context of administrative proceedings and civil inquiries, as well as the way of assistance to the public.

In this scenario, it is valid to follow the issuance of new regulations throughout the period of the pandemic and, in any circumstances, it is essential to register the progress of the measures adopted to solve the issues arising from the pandemic in order to use it as future evidence in eventual legal defenses.

CONSUMER & PRODUCT LIABILITY

PUBLICATIONS REGARDING CORONAVIRUS

- On June 12th, 2020, the Law n. 14.010/2020 was published, in order to establish a new emergency legal framework concerning private relationships during the period of the coronavirus pandemic. According to article 2nd of the law, the suspension of rules does not imply its revocation or alteration. Therefore, the Law n. 14.010/2020 does not modify any article of other laws, as it does not intend to establish any permanent regulation, but only aims at suspend the application of certain rules that are incompatible with the current crisis situation. Concerning the consumer relations, article 8th of the new law determines that “the application of article 49th of the Consumer’s Protection Code is suspended for the delivery of perishable or immediate consumption products and medicines”. The referred article 49th of the Consumer’s Protection Code provides the consumer’s right to withdraw from a contract that was made outside the commercial establishment (purchase/sale of products or services online, by telephone or at home). In these cases, the consumer has seven days, counting from the receiving of the product or service, or from the date when the contract was signed, to withdraw without any justification, and to receive a full refund of the contract’s price. The new law, however, determines that the right to withdraw from a contract is suspended until October 30th, 2020, for the purchases of (1) perishable or immediate consumption products through home delivery services; and (2) purchases of medicines. The regulation aims to provide some relief for the suppliers of such products, which were considered essential by the article 3rd, §1º, XII of the Decree n. 10,282/2020.
- On April 08th, 2020, the Federal Government published the Provisional Measure n. 948, which refers to the cancellation of services, reservations and events in the Tourism and Culture sectors, including accommodation services, travel agencies, event organizers, theme parks, cinemas, theaters, online ticket sales platforms, restaurants, cafeterias, concert halls, and others. The Provisional Measure provides the possibility of rescheduling the service or event; or granting the consumer a credit for later use in another service or event. If the supplier is unable to offer one of these options, the Measure prescribes the refund of the amount paid by the consumer, adjusted for inflation, within 12 months after the end of the pandemic. The options will not have any additional cost to the consumer if the request is made within ninety days, starting on April 08th, 2020. The Provisional Measure also excludes the possibility of claiming moral damages, based on the force majeure circumstances, exempting the suppliers from fines or other penalties arising from potential violations of the consumer protection laws.
- On April 1st, 2020, the National Consumer Secretary (Senacon) published the Ordinance 15, which determines the registration of the following companies on the Consumidor.gov.br platform: (i.) companies with national or regional operations in sectors involving public services and essential activities; (ii.) digital service platforms over the internet dedicated to individual or collective transportation of passengers; delivery

of food, or companies dedicated to the promotion, offer or sale of products to the final consumer; or (iii.) economic agents listed among the two hundred most complained companies in 2019. The Ordinance applies to the companies above that (1) have gross sales of at least BRL 100,000,000.00 in the last fiscal year; (2) have reached a monthly average of 1,000 complaints or more in their customer service channels in the last fiscal year; or (3) are claimed in more than five hundred lawsuits that discuss consumer relation. Suppliers will have 30 days, starting on April 1st, 2020, to register on the platform.

- On April 2nd, 2020, the Ministry of Justice and Public Security published the Ordinance 156, which suspended, for 60 days, the application of fines in cases in which the Customer Services (SACs) of the companies take longer time to assist the client than the maximum allowed by the law, depending on the type of activity. The Ordinance mentions the Ministry of Health's recommendation that, during the pandemic, customer services should, whenever possible, be carried out through digital channels, that can be accessed and used by the largest number of consumers, without the need of a face-to-face service. The interruption or alteration of the service channels must be clearly informed by the supplier. During the effectiveness of the measure, which may be revised or extended, the National Consumer Secretary (Senacon) will monitor the service provided to consumers through reports that the companies must submit to the agency.
- Effective from March 18th, 2020 the Provisional Measure 925 provides emergency measures for Brazilian Civil Aviation due to the pandemic caused by the new coronavirus. The Provisional Measure stipulates a period of 12 months for reimbursement of the amount related to the purchase of airline tickets made until December 31st, 2020 and exempt from contractual penalties those consumers who accept to use the amount in credit within 12 months counted from the date of the flight.

TECHNICAL NOTES PUBLISHED BY SENACON

Due to the coronavirus pandemic, the National Consumer Secretary (Senacon) recently published several Technical Notes, which aim to recommend some measures to be adopted in consumer relations.

The Technical Note n. 29/2020 provides recommendations to airline companies, advising them to extend the validity of points accumulated in loyalty programs and to reimburse the points related to tickets that were canceled due to the limitations imposed by the coronavirus pandemic. Senacon claimed that the reduction of national and international flights, in addition to the uncertainty about the end of the social isolation measures, reduced the possibilities of using the accumulated and soon-to-expire points on flights. The main companies of the sector were notified by Senacon about the new Technical Note's recommendations.

The Technical Note n. 36/2020 analyzes if the measures adopted by financial institutions coincide with the Ministry of Economy's determinations, whose aim is to reduce the impact of the Covid-19 pandemic on the economic sector. At the beginning of the crisis, the Brazilian Federation of Banks (Febraban) announced that almost BRL 200 billion worth loans were under renegotiation, and grace periods of three months for payment installments were being granted. However, after consulting the Consumidor.gov website, Senacon realized that many consumers were facing difficulties to obtain the benefits announced by the banks, reporting unsuccessful attempts to get credit lines or renegotiate debts. Consumers also reported doubts about the installment's due dates, and about the way they would receive the financial assistance from the government.

These complaints, therefore, involved not only the denial of benefits, but also the failure to provide comprehensive information by the banks. To address these issues, Senacon decided to individually notify the financial institutions and to alert the consumer protection agencies, emphasizing: the need for inspections over the effective access of consumers to channels dedicated to the clarification of doubts; and to recommend the use of the Consumidor.gov platform by consumers willing to report current difficulties and issues.

The Technical Note n. 14/2020 address the rights of consumers who have hired services with education institutions, but whose classes have been suspended due to the coronavirus pandemic. In the Technical Note, Senacon mentioned that the pandemic fits into the hypothesis of exclusion of the supplier's liability due to force majeure circumstances. The agency recommended solutions negotiated between the parties, giving preference to the offer of (1) face-to-face classes in a later period, with the modification of the school's calendar, or (2) online classes, according to the legislation of the Ministry of Education. In these two cases, Senacon understands that it would not be possible to reduce the monthly fees nor to postpone payment. According to Senacon, the fact that educational institutions are not having certain costs due to the interruption of classes does not authorize the requirement for a discount in the fees, since classes will be replaced at a later time or new technological investments will be necessary to provide online classes. Only in the cases where there is no possibility of face-to-face classes in a later period or use of online methods, does Senacon recommend the cancellation of the contract or proportional discount request, with the total or partial refund of the amounts due. In case that the quarantine period is extended, it will be necessary to adjust the contract, and one of Senacon's recommendations is the compensation of the amount paid, through discounts or scholarships, in order to preserve the consumer's right and also to avoid damages to the supplier.

In the case of nurseries and day-care centers, the Technical Note 1/2020 recommends the future provision of the service, after the end of the pandemic, including through alternatives to the consumer, such as, for example, the possibility of compensation through additional activities or recreation. If that is not possible, the agency recommends the offer of a discount proportional to the indirect cost savings obtained as a result of the suspension of activities, such as those related to water, energy, hygiene materials, transportation costs, food etc. Also, compensation can be held in the future, with discounts in the monthly fees or on the annual fees for school equipment.

In the Technical Note n. 26/2020, Senacon presented complementary guidelines for relations between consumers and education institutions, alerting such institutions about the protection of the students' privacy and the need of previous consent to record video classes. Senacon also stated that education institutions should avoid adopting the same criterion for monthly fee discounts before evaluating how the discounts could impact the quality and the continuity of the services provided. The recommendation is that the institutions should analyze each student's financial condition to assess compatible discounts. Finally, Senacon questioned the Ministry of Education about orientations on the quality of the services provided during the pandemic and the compliance with the school's calendar.

The Technical Note 33/2020 involves the rights of consumers who hired student transportation services and are unable to use them during the coronavirus pandemic. In this case, some difficulties arise from the reduction of school days, the substitution of in person for online classes, and a consequential decrease in the number of trips to the school's premises. Senacon recommends that the consumers who did not suffer a significant financial impact should maintain the payment to service providers.

The amounts paid during the suspension of services must be converted into credits for future use or discounts/compensations when the transportation services resume, even if it is necessary to make such compensation in the following year. The hypothesis of accepting the temporary suspension of payments without the termination of the contract should also be evaluated by the service providers capable of supporting this reduction in their income. However, if the consumer do decides to terminate the contract, no fines or penalties of any kind should be applied, even if they were initially provided in the contract, as this termination is based on the impossibility of rendering the transportation services. Finally, in cases of termination, the service provider is will not be obliged to guarantee a place when in-person classes resume, nor guarantee the same price previously charged.

The Technical Note 08/2020 refers to the abusive pricing of products and services, which, according to Senacon, would constitute a violation of article 39, X of the Consumer's Protection Code, which prevents the supplier from increasing the price without just cause. The Technical Note is addressed to the entire National System of Consumer's Protection and has the purpose of serving as a guide for examining abusiveness in the price increase of many products and services that may be affected due to the pandemic. In the Note, Senacon lists a series of considerations to be carried out in the specific case, such as the identification of the product, verification of other companies that compete in the same market and the existence of just cause for the increase, such as growth in the demand for some products and the interruption of production lines, for example.

The Technical Note 11/2020 presents a study regarding the economic impacts on the tourism sector in Brazil, due to the pandemic caused by the new coronavirus. Noting that airlines, event organizers, hotels, cruises, travel agencies, among others would be more sensitive to the cancellation of contracts and requests for reimbursement, Senacon, through this Technical Note, and in order to mitigate the effects caused by the pandemic, recommended the registration of the companies in the Consumidor.gov platform, aiming to facilitate the negotiation with consumers through a virtual channel, without the need of judicial measures.

The Technical Note 13/2020 seeks to present an alternative solution for the operation of call centers and telemarketing centers during the coronavirus pandemic, since the activity was considered essential by the Decree 10.282/2020. The Technical Note recognizes that the pandemic compromises the service capacity of the companies mentioned above. Therefore, the Ordinance MJ 2014/2018, which regulates the provision of delegated public services – accordingly to the Decree 6.523/2008 – and stipulates the rules that must be observed by the free Consumer Attending Services (SACs) was suspended.

RISKS TO BE CONSIDERED

- Shortage of imported components on the market, which impacts the manufacturing lines of companies who depend on certain inputs.
- Failure to meet delivery deadlines for products and rendering of services previously agreed upon.
- Inobservance of the period of 30 (thirty) days set by the Consumer Protection Code for product repair.
- Greater number of cancelled events, bookings, airline tickets, accommodation packages and other services.

- Considerable increase in the demand for health services.
- Changes in the calendar and schedule of school activities and courses in the area of education.
- Individuals filing lawsuits against investment broker agencies due to the eventual devaluation of their securities.
- Greater intensity of PROCON inspections to investigate abusive practices, with possible application of sanctions (fines) and
- Individuals filing lawsuits against investment broker agencies due to the eventual devaluation of their securities.
- Greater intensity of PROCON inspections to investigate abusive practices, with possible application of sanctions (fines) and
- Increase in collective actions and public civil actions as a result of alleged illegal practices.

RECOMMENDATIONS

- Intensify customer service in order to manage the deadlines for delivering products and rendering services that have been compromised, keeping them informed, in an intensive, clear and up-to-date manner. Prompt, effective and creative service tends to provide reasonable solutions and to avoid complaints caused mainly by the difficulty of the consumer's access to the supplier.
- Review and adapt the agreement policies to the new scenario, whenever applicable, in order to avoid creating liabilities from administrative and judicial discussions.
- Approach consumer protection agencies in critical and repetitive situations, aiming at standardizing possible measures to be implemented.
- Use the option provided for in the Consumer Protection Code to reach an agreement with consumers to extend the 30-day period for product repair.
- Adjust product offer and advertising to the actual capacity to match the scenario.
- Avoid the adoption of practices that infringe consumer rights, such as an increase in the price of products or services without cause. In this regard, the Brazilian Chamber of Electronic Commerce (Câmara-e.net) and its associates, in partnership with SENACON (National Consumer Department) launched the campaign Together Against Abusive Offers.
- Observe the determinations of federal, state and municipal bodies regarding the restriction of public access to certain places and/or events in order to avoid exposing consumers to health and safety risks with consequent administrative, civil and criminal liability.

- Observe the ANS (National Health Agency) resolutions regarding the treatment of the disease, especially Resolution 453/2020, which includes tests for the detection of the new coronavirus in the list of mandatory procedures for beneficiaries of health insurance plans.
- Cancellations and changes to reservations, packages or travel plans: The Federal Attorney General's Office recently recommended that ANAC grant consumers with the possibility of free cancellation of airline tickets to destinations affected by the new coronavirus. Likewise, Consumer Protection Entities recommend that airline policies be made more flexible, waiving off penalty charges for cancellations or rescheduling in the face of the proliferation scenario of new coronavirus, especially in the case of international destinations.

It is important to note that, in order for suppliers to be exempt from liability arising from a consumer relation due to force majeure, they must clearly demonstrate to what extent the new coronavirus pandemic was a determining factor for the breach of the obligation. It is essential, therefore, that suppliers keep any element necessary for future use if required to do so. Proof of the adoption of measures with a view to mitigating the effects to be borne by the consumer (e.g. care provision, information disclosure, offering alternatives, etc.) also tends to be relevant.

It is worth mentioning that the acknowledgement of liability exclusion is always an arduous task within the context of consumer relations, and that the burden of proof behind the claims is on the supplier.

CONTRACTS

The effects of new coronavirus on commercial relations have been and will be quite significant, not only because of the evident slowdown in the economy worldwide, but also due to delays in the supply chain, to increased costs for fulfilling obligations or to the virtual impossibility of rendering some services. Entire production chains have already been affected, either by shortage or scarcity of raw materials and inputs or by the significant reduction in demand. In addition, the scenario has not stabilized yet, so new production chains may be affected, directly or by cascade effect.

In Brazil, events beyond the control of clients, such as the current pandemic, can generate contractual consequences regardless of scenarios expressly foreseen between the parties. These consequences are varied and depend on the circumstances of the case. The most notorious one is the occurrence of acts of God and force majeure, but the effects also exist in the events of default and contract review.

An event is classified as act of God or force majeure when the event itself and its effects have certain characteristics: both the event itself and the effects connected to it cannot be attributable to the party who claims it. After its characterization, the debtor's liability is released.

Regarding the debtor's default, it is important to mention that it assumes the occurrence of a fact that is attributable to the debtor. Therefore, if the fact that causes the delayed installment is not attributable, there will be no default and, therefore, there will be no default interest and penalty for late payment.

Unforeseeable events may also entitle contractual review. So far, the STJ has been very limited in accepting revisionary claims, but it impossible to predict how courts will handle the issue. It is worth remembering that a contractual review does not only assume the occurrence of an unforeseeable event, but it also demands other requirements according to specific applicable rules.

In addition, the event of contractual termination cannot be ruled out if rendering the service becomes impossible or if the delay in the service is not admissible in the specific case.

In any case above, three general considerations can be made:

- (i) The burden of proof regarding the characterization of the event and its effects on the contract rests with the debtor, who is imposed the need to show the cause and effect relationship between the pandemic and the impossibility of fulfilling the contractual obligation.
- (ii) The particular contract may contain a rule on the matter and, thus, its provisions tend to be sovereign in the case.
- (iii) After the occurrence of the event, the debtor's conduct will be relevant to the acceptance of any measure of suspension or change in contractual provisions.

REAL ESTATE

The notary and registries services were directly affected by the COVID-19 pandemic. This fact required a solid action by the National Council of Justice (“CNJ”) in order to create national applicable rules to preserve and standardize the continuity of services during the pandemic.

On March 28th, 2020, the CNJ issued the Act No. 94 to maintain the functioning of the services rendered by the Real Estate Registry Offices during the quarantine period declared by several municipalities. The Act provides that the operation of Real Estate Registry Offices is mandatory and must occur in every business day, preferably by a remote on-call regime, which should last a minimum of four hours.

The service shall be provided by the Electronic Services Center of the respective State or the Federal District. Through a digital hub, the users will be able to request real estate certificates, as well as to file documents before the competent Real Estate Registry Office.

Among other provisions, the Act No. 94 establishes that:

- Where immediate implementation of the remote service is not possible, and until it becomes effective, in-person assistance will be adopted exceptionally;
- The Real Estate Registry Officers are authorized to receive documents in electronic form by other means that prove the authorship and integrity of the file (in the form of Art. 10, § 2, of the Provisional Measure 2,200-2 / 2001);
- Remote on-call services will be promoted by directing the interested party to the use of the Shared Electronic Services Center of the respective Federation unit, for real estate certificates requests and for the remittance of titles for registration;
- During the on-call regime, attendance must be maintained for a period of no less than four hours by means of communication that are adopted for remote services, which will be announced on a poster to be fixed on the unit’s door that is easily visible, and on the Internet webpage;
- While the on-call regime lasts, the registration term of validity, and the qualification and practice of registration acts terms of validity shall be doubled, with the exception of: (i.) real estate certificate issuance, and (ii.) records of collateral contracts on movable and immovable property that are a condition for the release of financing granted by credit institutions, considering the control of the adversarial system principle and the chronological order of the presentation of titles.

On April 1st, 2020, the CNJ published the Act No. 95 regulating the services provided by Notaries and Registry Offices during the period of Public Health Emergency of National Concern, effective until April 30th, 2020.

The specific dispositions established in the Act No. 94/2020 for the Real Estate Registry Offices have been maintained and were extended to Titles and Deeds Registry Offices, Civil Registry Offices of Natural Persons and Legal Entities among other Registry Offices, as well as to Notaries.

In line with the previous act, CNJ now provides that Notaries and Registry Offices services shall be considered as essential activities that must be maintained during the pandemic period, with its services preferably being performed remotely. Several provisions of the Act No. 94 were extended to Notaries and other Registry Offices, such as: (i) on-call remote services should be available for four hours and in-person services to be available for two hours; (ii) the use of postal services or any other means for the receipt and return of physical documents; and (iii) the authorization to receive electronic documents, including born-digital and digitalized documents, according to technical standards.

Regulations will be issued by the States and Federal District in order to organize the operation of Real Estate Registry Office, Titles and Deeds Registry Offices, Civil Registry Offices of Natural Persons and Legal Entities and Notaries.

On June 12th, 2020, CNJ published the Act No. 105 to extend the term of effectiveness of the Acts No. 94 and 95 until December 31st, 2020. The aforementioned term may be extended or reduced, if necessary.

During the COVID-19 pandemic, the CNJ also regulated the practice of electronic notarial acts by all the Public Notaries of the country, through the Provision No. 100, of May 26th, 2020.

By such Provision, the electronic acts will be drafted through the Electronic Notarial Acts System named "e-Notariado", which will be made available online by the Brazil's Notarial Public Entity.

The aforementioned system will be equipped with the technological infrastructure necessary for the electronic notarial operation and will have the following as its main objectives, among others:

- interconnect the Notaries, allowing the practice of electronic notarial acts, the exchange of documents and the traffic of information and data;
- implant, at a national level, a standardized system for the drafting of electronic notarial acts, allowing their request, issuance of certificates and the execution of agreements with interested third parties.

In addition, the notarial acts to be issued by the e-Notariado will be deemed public instruments for all the legal effects, being effective in front of the public registries, financial institutions, Boards of Trade, Departments of Motor Vehicles ("Detrans"), and will also be legally effective before public administration bodies and private entities.

By the referred Provision, it is forbidden the issuance of electronic or remote notarial acts electronically signed without the e-Notariado's usage.

INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT

Future developments in the Intellectual Property area can be expected, mainly in the field of investments in innovation in the pharmaceutical area. Many companies and public research entities are determined to respond to demands for new drugs, hospital instruments, vaccines and more effective immunosuppressants.

While many developments such as surgical or therapeutic techniques and methods will not find reassuring protection in our legal system because they are not object of protection in the Brazilian law, others may be subject to patent protection that guarantees exclusivity to its holder for a period of up to 20 years from their filing date.

On April 07, 2020 published a new rule establishing a fast-track examination for patent applications related to Covid-19. Thus, any applications which refer to a product, pharmaceutical process, equipment and/or materials for use in healthcare with the purpose of diagnosing, promoting prophylaxis or treating the new coronavirus will be eligible for such prioritized examination.

The fast-track procedure will only accept patent applications filed until June 30, 2021. As a result, the examination process will be drastically expedited. Another advantage of this procedure is to encourage the development of new technologies focused on the new coronavirus.

As a complementary study, the BPTO also published data related to patent applications already filed and analyzed in Brazil for diagnostic methods for coronavirus and other respiratory viruses. The study identified 141 patent applications citing respiratory viruses, amongst which, 65 expressly indicate coronavirus as a targeted virus. It is also noted that the filing peak of these applications was between 2004-2012, when other epidemics caused by coronavirus took place, namely SARS and MERS.

It important to mention that all member countries of the World Trade Organization have legal instruments that regulate and/or authorize, in certain cases - a pandemic is certainly one of them - the imposition of emergency measures such as compulsory licensing to guarantee access of population to drugs and vaccines.

It important to mention that all member countries of the World Trade Organization have legal instruments that regulate and/or authorize, in certain cases - a pandemic is certainly one of them - the imposition of emergency measures such as compulsory licensing to guarantee access of population to drugs and vaccines.

In Brazil, a compulsory license can be applied in cases of national emergency or public interest, declared by Federal government acts, as long as the patent holder or its licensee does not meet market needs or is unable to distribute the drug with the necessary efficiency. In that case, a compulsory, temporary and non-exclusive license may be granted, on an official basis, for the exploitation of the patent, without prejudice to the rights of the respective owner. The law expressly prohibits sublicensing in the case of a compulsory license.

Within the scope of Copyright and Entertainment there have been issues concerning civil and contractual liability, especially in cases of lack of insurance to cover the contracting party. In addition, there has been a high number of suspended and defaulted contracts arising from productions, shows and concerts not happening.

In this connection, Provisional Measure 948 was published on April 8, 2020, to regulate the cancellation of services, reservations and events in the fields of tourism and culture as a result from the pandemic.

According to the Measure, producers of concerts and shows or service providers related to them are not bound to refund consumers, provided that they: 1) reschedule the services, reservations and canceled events, 2) offer credit or rebates for the purchase of other services, reservations or events carried out by them, or 3) enter into other agreements to be formalized with the consumer. No fees, fines nor other additional costs shall be imposed for the cancellation of the services, provided that the request be made within a 90-day term from April 8, 2020.

The Measure also applies to tourism service providers, hotels, theme parks, camps, carriers, travel agencies and event organizers in general, as well as to cinemas, theaters and digital ticket sales platforms. It is possible that restaurants, coffee shops, convention centers, marinas, fair organizers and even car rental companies for tourists be considered service providers contemplated by the Measure, provided that they are duly registered with the Ministry of Tourism and comply with the specific requirements of Law 11,771, of September 17, 2008.

Artists who have already been hired and are impacted by event cancellations (such as concerts, rodeos, musical and performing arts performances,) will not be obliged to immediately refund their services or fees, as long as the event is rescheduled within 12 months from the date on which the state of public calamity ends. This benefit also applies to professionals hired for the execution of such events. If the service provider, professional or contracted artist does not render the service within the assigned term, the amount paid must be refunded adjusted by inflation.

In view of the occurrence of force majeure, the Provisional Measure also removed applicability of moral damages in the cited cases, as well as exempts the service provider from payment of fines or other penalties arising from possible infringement of consumer law provisions.

RESTRUCTURING & INSOLVENCY

The already challenging economic scenario tends to become more serious with the pandemic. Thus, it is likely that companies will suffer from contract breach, cash flow problems and exchange rate variations, which may require the adoption of measures such as the renegotiation of obligations.

With the goal of allowing cash flow adjustments, the National Monetary Council waived the need for banks to increase provisioning in the event of renegotiation of credit operations to be carried out in the next six months, besides expanding the capital using capacity from financial institutions in order to enable such renegotiations in a feasible way, as well to maintain credit flow; such measures regard the decision of the Central Bank of Brazil of reducing the percentage of compulsory deposits.

Likewise, the Economic and Social Development National Bank (BNDES) has announced some remedies, like the possibility of suspension of the interest and principal payments flow (standstill) for six months for direct and indirect operations with BNDES (capitalizing such amounts into the debit balance, maintaining the total operation time and limiting, regarding the direct operations, the dividends payment to the statutory minimum) and the concession of 5 billion Brazilian reais to working capital through transfer from financial agents, in benefit of micro, small and medium-sized companies (with a maximum revenue of 300 million Brazilian reais per year), having such line of credit a 24 months grace period, a 60 months total term, a 70 million Brazilian reais limit by client, not being necessary that the company specifies the resources destination.

Moreover, the Central Bank has announced a line of credit destined to the payroll financing of small and medium sized companies (annual revenue from 360 thousands Brazilian reais to 10 million Brazilian reais) for a two months' period, forbidding, on the other hand, the dismissal of employees during such period. Such financing measure is limited to two minimum wages by employee. The financing will be monetarily readjusted by the SELIC interest rate, with a six months grace period and 36 months for the payment.

Anyway, if necessary more vigorous measures, filing for reorganization procedures (extrajudicial or judicial) to restructure debts may be necessary.

Besides that, the pandemic tends to affect ongoing reorganization procedures, what will consequently unleash the extension of the stay period. In this sense, it is likely that creditors' meetings will be suspended or performed by electronic means in order to avoid crowding. Furthermore, the Judiciary has been adopting some measures with the scope of loosening the accomplishment of reorganization plans already approved by the creditors, even authorizing the underpayment of installments whose due dates will occur during the pandemic.

Likewise, the suspension of procedural terms shall affect such procedures – it is important to highlight, at this point, the fact that the substantive law terms, as a rule, are not suspended. Therefore, it is important that the companies adopt the appropriate actions in order to pursue, as far as possible, the continuation of the reorganization and the bankruptcy procedures and

the bankruptcy procedures and the feasibility of the fastest recovery of credit, availing themselves of the urgent measures available whenever appropriate.

In this line, the National Council of Justice (CNJ) has published a recommendation of remedies' adoption in order to standardize the reorganization procedures treatment before the economic impacts arising from the measures adopted to fight the new coronavirus spread. The Recommendation No. 63, published on March 31st, 2020, is addressed to all the courts with jurisdiction for the judgement of the procedures ruled by Law No. 11.101/2005. The recommended and approved measures are as follows:

a) to prioritize the analysis and judgement of questions related to the surveying of amounts in favor of creditors or debtor companies, in order to contribute with the maintenance of Brazilian economy's regular operation and with the survival of families;

b) the suspension of in-person creditors' meetings as long as the pandemic remains, authorizing the realization of virtual meetings when verified urgency for the maintenance of the debtor's business activities and for the start of the creditors' payments, being the bankruptcy trustee responsible for providing its performance;

c) postponing of the suspension period of the statute limitation course, of the actions and enforcements against the debtor company (stay period), provided in article 6 of Law No. 11.101/05, when necessary the postponement of the creditors' meeting and until the moment it is possible to decide about the confirmation or not of such meeting;

d) the authorization of submission of a new reorganization plan, within a reasonable time, if proven I) the reduction of the company's capacity in fulfilling the already approved plan's obligations, due to the measures imposed as a result of the pandemic, and II) the fulfillment of the obligations assumed in the current plan until March 20th, 2020. Moreover, it is recommended the observance of majeure force occurrence, under case facts, before a potential bankruptcy declaration due to the non-compliance of an obligation assumed in the reorganization plan;

e) the determination aimed to the bankruptcy trustees to continue to audit the debtor's activities, in a virtual or remote way, and to continue to submit the Debtor's Activities Monthly Report through their respective web pages; and

f) the granting cautious evaluation of the urgent measures, the eviction order for nonpayment and the performance of the patrimonial enforcements in lawsuits which required losses and damages due to non-compliance of obligations during the validity period of the Decree-Law No. 6, of March 20th, 2020, which has declared the state of emergency in Brazil.

Additionally, several Courts of Justice are adopting conciliation and mediation programs in order to avoid legal disputes and potential recovery process.

Finally, the Legislative Power is working on a possible reform of the Law No. 11.101/2005. There are several bills pending in the National Congress aiming to establish emergency measures to face the crisis. However, to date, none have been approved and sent for presidential approval.

DISPUTE RESOLUTION

The new coronavirus pandemic has important impacts for ongoing disputes and may give rise to several new disputes. This is true both in judicial and in arbitration spheres.

ONGOING DISPUTES

The restrictive measures that have been gradually recommended and/or imposed by public bodies and private organizations will certainly cause delay, which may significantly impact delivery and effecting any ruling settling incidental or final issues in judicial and arbitration disputes.

In judicial litigation, for example, several courts throughout the country, such as the State Courts of Sao Paulo, Rio de Janeiro and Rio Grande do Sul, issued normative acts suspending procedural times, hearings and trials, besides restricting the circulation of internal and external individuals to courts. This causes special difficulties both in the obtention of notary requests (issuing certificates and permits, for example) and hearings with magistrates. An increase in the availability of non-face-to-face contact, including the use of new technological tools (i.e. videoconference hearings, virtual trial sessions), represents an alternative to bypass restrictions. In general, proceedings involving urgent measures have deserved special treatment.

[Check this link](#) for the consolidated list of normative acts issued by courts and their scope. In the course of the next few days, it is expected that all courts in the country will implement to a greater or lesser extent restrictive measures and suspension of terms and/or activities. In situations not covered by the resolutions, the parties may request an extension of times for good cause (thus understood as beyond control of the party in charge). In exceptional cases, good cause must be assessed on a case-by-case basis. It is also necessary to consider the possibility of mutual agreement between the parties on the extension of unexpired times or the suspension of the proceeding.

In arbitration proceedings, several courts have already suspended hearings and physical protocols. Ad hoc procedures also tend to experience suspension or time extension. In addition, difficulties inherent in the current scenario might make it more difficult to prepare lawyers, clients, witnesses and technical experts for hearings, even those that are still far in time to happen. The use of technological tools for preparatory activities and hearings should gain considerable space and be encouraged, especially as a measure to avoid extensions

that could be prevented. When this is not possible, difficulties must be dealt with in the light of the respective regulations and terms of arbitration, as well as through agreements between the parties and/or claims to the arbitral court.

NEW DISPUTES

It is expected that the pandemic will cause or precipitate the appearance of disputes, especially around the default of obligations and their factual and legal characterization.

Because of that, in preparation for the disputes that will arise, it is recommended to promptly adopt measures to record and preserve evidence, such as the verification of causes that exclude causality, such as unforeseeable circumstances or force majeure. Although the occurrence of the pandemic is notorious, it is of utmost importance to show the inevitability of its effects. Since the pandemic itself is not a necessary cause for releasing an obligation, in a dispute over the occurrence of unforeseeable circumstances or force majeure it will be necessary to ease the burden of proof for the debtor in that the effects of the pandemic that have inevitably affected performance.

In all cases and because of absolute necessity, the evidence produced will be decisive, which is why all measures for recording and keeping documents must be taken, both in an extrajudicial way, such as cataloging documents and obtaining notary minutes, and, whenever possible, through advance production of evidence, in the sense of safeguarding rights in eventual disputes.

CORPORATE LAW/M&A & CAPITAL MARKETS

The uncertainty in face of the pandemic has affected the market. Such uncertainty, however, does not immunize the companies and other agents from the fulfillment of their obligations.

On the other hand, some remedies are being adopted to mitigate the COVID-19's impacts. In this regard, a Provisional Matter ("MP 931") was published on March 30th, 2020, and converted into Law No. 14,030, on July 28th, 2020 ("Law 14,030"). This Law authorizes that corporations, limited liability companies and cooperatives whose social accounting year closes between December 31st, 2019, and March 31st, 2020, accomplish their general meetings or ordinary meetings within seven months to be counted from the accounting year's conclusion; for cooperatives, this term is 9 (nine) months from the end of the fiscal year.

Furthermore, contractual or statutory provisions that demand the realization of such act in a shorter period shall be considered void for the year of 2020. Taking into account the subjects object of the annual general meetings or ordinary meetings, the Law 14,030 reified the extension of the managers' and the members of the fiscal and statutory committees' management or performance deadlines until the conclave's realization or until the board of directors' meeting, as the case may be.

Besides, in the corporations, the board of executive officers or of directors may declare dividends until the accomplishment of the Annual General Meeting, even if the articles of corporation are not amended – in this case, the board of directors shall deliberate, ad referendum, the urgent subjects that the General Meeting should discuss. Such provisions shall be applied to the government companies, to the government-controlled companies and their subsidiaries.

The Law 14,030 maintained the authorization granted by the MP 931 to Securities and Exchange Commission ("CVM") postpones the terms provided for in the Businesses' Corporation Act during the fiscal year of 2020 – including the one related to the presentation of financial statements. Although, it applies only to the private publicly held corporations.

Furthermore, the Law 14,030 reified the modification of the Civil Code, the Cooperative Law and the Businesses' Corporation Act, allowing the attendance and the vote in general meetings or ordinary meetings by remote means, whose terms have already been regulated by the National Department of Business Registry and Integration (DREI) in the current Normative Ruling No. 81, especially, in its Annexes IV, V, and VI, published in the Official Gazette on June 10th, 2020, which replaced several previous Normative Rulings, including the Normative Ruling DREI No. 79, which previously regulated the matter ("DREI Normative Ruling 81") – and, regarding the publicly held corporations, regulation was provided by CVM Resolution No. 481, of December 17th, 2009, pursuant to the amendments introduced by CVM Resolutions No. 622 and 623, of April 17th, 2020 and May 5th, 2020, respectively.

The DREI Normative Ruling No. 81 and CVM Resolution No. 481 establish the attendance and vote by distance in meetings of closed capital corporations, limited liability companies

and cooperatives, as well of publicly held corporations – and that the face-to-face meetings already summoned and not held yet due to the COVID-19 pandemic may be held by distance since all the shareholders, partners and associates are present or expressly declare their agreement. Specifically, with relation to publicly held companies, CVM established that company shall disclose the necessary information to hold a meeting by Material Fact, five business days in advance of the meeting holding. Exceptionally, one business day in advance for meetings called to be held until April 30th, 2020. In the non-regulated aspects by the Normative Rulings, shall be applied the compatible rules regarding the person meetings. Such Normative Rulings are not applicable to the meetings in which the shareholders', quotaholders' and members' attendance and vote are exclusively in person.

In accordance to the mentioned Normative Rulings, the meetings may be (i) semi presential, when the shareholders, partners and associates can attend and vote by a face-to-face or distance means or (ii) digital, when the attendance shall happen totally by distance, not being held in any physic place but that, for all measures, will be considered as held in the company's headquarters. The attendance and vote by distance may be by the sending of a distance vote sheet and/or by remote actuation, by an electronic system.

The company must adopt system and technology both accessible in a way that all attend and vote by distance means in the semi presential or digital general and ordinary meetings, being possible the hiring of third parties to administrate, in the company's name, the information processing. Anyway, the company will not be liable by problems unleashed by the informatic equipment and the computer global connection of the shareholders, partners or associates, as well as by any other situation which may run off its control.

The electronic system for the general and ordinary meeting's performance shall guarantee: (i) the security, trust and transparence of the conclave; (ii) the attendance register; (iii) the distance participation right preservation; (iv) the distance voting right performance, as well as its respective register; (v) the possibility of documents visualization presented during the conclave; (vi) the possibility of the table to receive writing manifestations by the shareholders, partners and associates; (vii) the full conclave's recording, that will be filled in the company's headquarters; and (viii) the attendance of administrators, people authorized to attend in the conclave and people whose attendance is mandatory. Besides that, in cooperatives, the system shall guarantee that the vote is anonymous in the bylaws' subjects that the vote is secret.

The company also shall maintain filled all the documents regarding the semi presential and digital general and ordinary meeting, as well as its full recording, for the term applicable to the lawsuit that aims to annul it.

Regarding the filing of acts before the Boards of Trade, the Law 14,030 reiterated some measures set forth in the MP 931. Thus, while persist the Boards of Trade restrictive operation measures due to COVID-19, (a) the term for filing acts that are signed from February, 16th, 2020, onward will be counted from the day that the respective Board of Trade reestablishes its regular operation; and (b) the obligation of previous filing for issuance of securities and for other legal transactions gets suspended from March 1st, 2020, and the act should be performed in the Board of Trade within 30 days from the reestablishment of the regular operation.

Additionally, CVM ruled the digital meetings of holders of debt securities, especially debentures, promissory notes, and real estate and agrobusiness receivable certificates –

“CRI” and “CRA”, by the edition of CVM Resolution No. 625, of May 14th, 2020. The procedures for holding these meetings are similar to those of the Publicly-Held Companies listed above. It is important to highlight that CVM Resolution No. 625 also comprises securities issued by Companies not registered with the CVM and that were subject of public offers with restricted efforts in accordance with CVM Resolution No. 476. CVM also clarified that the responsibilities attributed to the Issuing Company or to the Fiduciary Agent, arising from CVM Resolution No. 625, are related to the agent that called the Meeting.

After, Law 14,010 was enacted on June 10th, 2020, provides, in its art. 5, that “the general meeting (...), until October 30th, 2020, may be held by electronic means, regardless of the provision set forth in the constitutive acts of the legal entity”, and allows participants’ manifestation “by any electronic mean indicated by the officer, that ensures the identification of the participant and the security of the vote, and will produce all the legal effects of a person signature “. This provision is important because it applies to any legal entity governed by private law (as associations, in addition to the other corporate types provided for by law); MP 931 contained rules for limited liability companies, companies and cooperatives. Additionally, the Law 14,030 set forth provisions for these corporate types and determined that the restrictions to the holding of in-person meetings until December 31st, 2020 must be respected the sanitary determinations of the local authorities. Thus, it determines the application to the other private legal entities of (i) the extension, within a maximum of 7 (seven) months, of the deadlines to hold the general meetings and of the duration of the managers’ mandate whenever applicable, and (ii) the possibility of conduction of meetings by electronic means, independent of provision in the articles of incorporation of the legal entity, under the Article 5th of the Law No. 14,101/2020.

Regarding the publicly held corporations, CVM has been paying attention to market conditions and has constantly oriented the companies by circular letters and resolutions. Thereby, CVM has published the Circular Letter SNC/SEP 02/2020 which imposes that the Investor Relations Executive Officer as well as the independent auditors consider the new coronavirus impacts in their businesses, the financial statements should report the most relevant risks and uncertainties in compliance with the accounting and auditing standards. Moreover, potential need for disclosure of relevant facts must be evaluated, as well as the projections and estimates regarding the risks of the new coronavirus at the preparation of the reference form.

In this sense, CVM also published the Circular Letter SNC/GNA 01/2020, by which CVM oriented independent auditors about registration, performance and standards with the purpose of reducing mistakes and misconduct. Several topics are addressed, including those related to COVID-19 pandemic. Likewise, CVM published the Circular Letter SNC/SEP 03/2020, through which exposed its understanding about the risk of systemic effect of the inadequate application of IFRS 9 in the Brazilian capital market and clarified that when mitigating measures are granted by creditors, the issuers of the financial statements must evaluate them in an ample perspective, considering all facts and circumstances in order to distinguish whether there has been a significant increase in credit risk or temporary liquidity restriction.

Concerning the public offerings already registered, the CVM has informed that it will automatically analyze the requests for alteration of the offerings grounded on the deterioration and volatility of the investment scenario, as well as will extend the distribution term for 90 days.

For this purpose, the providers shall report properly the investors about such modifications, as well as provide the withdrawal to those investors who already have adhered to the offering and observe the other provisions of the mentioned circular letter and of the ICVM No. 400.

In addition, the CVM issued the Resolutions CVM No. 848, of March 25th, 2020, 849, of March 31st, 2020, 852, of April 15th, 2020, 853, of April 22nd, 2020, and 862, of July 23rd, 2020, through which many regulatory terms were postponed due to the pandemic. Among the deadlines' modifications, stand out the following ones: (i) suspension of procedural deadlines (currently resumed); (ii) postponing of the liabilities' expiration date undertaken by Commitment Terms, and of the inspection rates' instalments, of the fines applied in Administrative Enquiry and of the punitive fines; (iii) suspension of the issuance of launching notices, except in the cases subject to tax credit's peremption or limitation of action; (iv) minimum break's suspension for the realization of two public offers; (v) suspension of the liability to file corporate acts that authorize the issuance of borrowers' notes at the competent board of trade, in order to submit to the CVM; (vi) postponing of the coming into force of the CVM Resolution No. 617/2019, of December 5th, 2019, regarding the money laundering and terrorism financing Prevention – PLDFT, except articles 27 and 28, which are in force since their publication; (vii) suspension of the deadline for trading securities distributed with restricted efforts in the secondary market (lock-up period), as set forth by article 13 of the CVM Resolution No. 476, of January, 16th, 2009, provided that the acquirer be a professional investor or the security be issued by a publicly-held company; (viii) postponing of other obligations of market participants, concerned to the registration, financial statements, quarterly report, General Meetings, communications and reports to the CVM, reference form, among others; (ix) for credit rights investment funds ("FIDC"), the reduction of terms for calling general meetings or requesting a manifestation by formal query, in 2020, that are ruled by CVM Resolution No. 356 and refer to amortization of equity and/or valuation events exclusively; and (x) 15-day extension to the deadline of submission of the quarterly information form relative to the quarter ended on June 30th, 2020 for publicly-held companies registered with the CVM and for the fiscal year ended on December 31st, 2019.

CVM also recognized the possibility of informational asymmetry resulting from the deadline flexibilities, and emphasized the full validity of the rules issued with the purpose of ensuring the integrity of the capital market, especially those related to inside information and price manipulation.

In addition to the CVM Resolution 848 and attending the market players' questions, the Institutional Investors' Relationship Superintendence – SIN published the CVM Circular Letter SIN 06/20, on March 26th, 2020, presenting its clarifications to the markets regarding the following subjects:

(i) portfolio non-compliance, asserting the non-existence of justified reasons for the using of punitive measures by the CVM in the cases of passive non-compliance of the investment funds' portfolios unleashed by circumstances in which the continuity of the unpredictability and the relevance of changes in the capital market's general conditions make it impossible to comply with the regulatory deadline foreseen for the reframing; (ii) temporary replacement of the opening quotas to closing quotas' calculation on investment funds governed by the ICVM 555; (iii) cancellation or postponing of the investment funds General Meeting, summoned or not, in the cases in which is not possible its execution remotely, virtually or by means of formal consultation, as long as observing the new deadlines established by the CVM Resolution 848 (asserting that such understanding is applicable to the CRI and CRA certified security companies and fiduciary agents); (iv) inexistence of an obligation foreseeing that the sending

of documents in the investment funds services providers' scope shall be by physical means or that may require the presence or physical contact, directly or indirectly, among people in general; and (v) understanding regarding creditors rights provisioning in FIDC, manifesting in the sense that the mere delay or renegotiation of a given creditor right's payment conditions are not sufficient circumstances to the provisioning constitution (but that, if the facts and circumstances indicate a significant deterioration in the credits recuperation capacity and, therefore, new credit risk associated to the asset, the manager has the duty to perform the provision established by the ICVM 489).

In the scope of CVM's sanctioning activities, the agency amended CVM Resolution No. 607, of June 17th, 2019, with the purpose of allowing the remittance of Administrative Agreement Proposal in the supervision process by electronic correspondence and providing that the negotiations of Commitment Term Proposals are not subject to the minimum period of ten business days, set forth in art. 25, §4, of CVM Resolution No. 607. CVM also resumed the judgment of the Administrative Processes by Videoconference, complying with the notice term, the accused's and their attorneys' participations, and CVM Directors votes, as regulated by CVM Resolution No. 855, of 30th April 2020.

The procedural deadlines were also resumed on July 21st, 2020, as a result of the expiration of the Provisional Matter 928, of March 23rs, 2020. In view of the above, the count of the terms that were suspended will be resumed from the moment that they were when edition of the mentioned Provisional Matter.

Finally, in Merger & Acquisitions operations and debts issuing – besides the natural impact in the operations ongoing, which tend to be postponed, what by itself may generate legal discussions –, it is important to highlight, for instance, the potential application of renegotiation sections or the occurrence of force majeure, as referred to in the item concerning the contracts.

LABOR

I. SAFE WORK – HOW TO TREAT SUSPECT AND CONFIRMED CASES

Safe work

Initially, it is important to highlight that companies have the duty to ensure compliance with a healthy work environment, so they must actively participate in the guidance of its employees and outsourced team regarding how to avoid the infection to spread, the symptoms attached and preventive measures aiming to reduce the transmission of COVID-19.

The most effective preventive measure, besides wearing masks, consists in washing hands often or using hand sanitizer that contains at least 70% alcohol in its composition, which must be available for all of the employees at the work stations.

Furthermore, the Ordinance n° 20, dated of June 18th, 2020, issued by the Ministry of Economy, establishes other general preventive measures that must be adopted, as well as regulatory acts and local decrees that must also be followed according to the location of the company. The Ordinance n° 20 is a general recommendation and some of its preventive measures are:

- I. Review procedures in order to avoid touching surfaces that are often touched (such as elevator buttons, access turnstiles, door handles, handrails, etc.), as well as increasing the cleaning frequency;
- II. To dismiss individual signatures in physical documents and to give preference to digital signatures;
- III. To adopt measures to raise distance and reduce personal contact between workers and external audience. The Ordinance n° 20 establishes the minimum distance of 1 meter and, if it is not possible to maintain this distance, it is necessary to wear surgical or tissue masks, facial protection (such as visors), protective goggles or waterproof partitions;
- IV. To limit the occupation of elevators, stairs and restrict places, including sanitary facilities and locker rooms;
- V. To prioritize the previous scheduling of the operation hours and distributing workers along the day, so that it is possible to avoid crowds and to manage the flow of people, avoiding face-to-face meetings.
- VI. To prioritize the remote work;
- VII. To give preference to natural ventilation and, in addition, to ensure that the air conditioning systems are being regularly checked (preventive and corrective maintenances);
- VIII. To provide disposable cups for water consumption.

Besides, it is required to establish procedures in order to identify suspect cases through:

(i.) communication channels to inform the beginning of signs or symptoms, contact with confirmed or suspect cases; and

(ii.) screening of all employees, including outsourced team, at the entrance of the company and in all of the working shifts. Companies can use, as a detection tool, infrared thermometers in order to measure people's body temperature.

How to treat confirmed cases, suspect cases and contactors of confirmed cases

Confirmed case: it can be considered a confirmed case when there is a laboratory test result confirming COVID-19 or when there is acute flu syndrome or severe respiratory syndrome and the employee had contact with another confirmed case in the last 7 days previously the first symptoms.

Suspect case: it can be considered a suspect case when an employee presents severe respiratory condition as well as one or more symptoms of COVID-19 (fever, cough, sore throat, coryza, lack of air, muscle pain, tiredness or fatigue, nasal congestion, loss of smell or taste and diarrhea).

Contactors of confirmed case: it can be considered a contactor of a confirmed case the asymptomatic employee that had contact with a confirmed case between 2 days before and 14 days after the first symptoms or the confirmation through a laboratory test, for more than 15 minutes and less than 1 meter of distance during transportation or sharing the same home environment. It is also a contactor of a confirmed case the health professional or another person that personally takes care of a COVID-19 case, or a laboratory employee that manipulates samples of a COVID-19 case without the recommended protection.

At first, it must be given assistance to the employee, that has to be accompanied by an occupational physician, who will define if an absence period of work is necessary or not. After that, it is necessary to gather information regarding the coworkers who had contact with the employee, as well as its activities, its workplace and the common areas frequented by the suspect or confirmed employee.

People who had contact with the suspect or confirmed case must be informed and oriented to immediately report if any symptoms appear.

I. The employees that are considered confirmed cases, suspect cases or contactors of a confirmed case must be immediately removed from work for the period of 14 days, counted by the last day of contact between the contactors and the confirmed case, upon presentation of a certificate from their private physician or by recommendation from the company's medical department. The employee can only return to work before the ending of the 14 days if there is a laboratory test result confirming that he/she is not infected by COVID-19 or if the employee is asymptomatic for more than 72 hours.

II. During the first 14 days of absence, the company will normally pay the employee's salary and after that period (if it is the case), the employee's health issues (and absence) become to be covered by the Public Social Security Institute, which becomes in charge of the payment of the employee's salaries throughout the leaving period.

III. It is recommended that the companies review its absence policies as well as its internal procedures regarding medical certificates. Also, it is fundamental that, when possible, employees work remotely (when the employee is asymptomatic or removed from its workplace due to suspicious of contamination or because lives with someone who is currently infected by COVID-19).

IV. Law no. 13.979/2020 provides, when it is not possible to work from home, that periods of isolation and quarantine must be considered as paid leave.

V. Occupational physician are obliged to communicate and report information to the government (Law no. 13.979/2020), if required to.

VI. In case of a confirmation of a Covid-19 case, the company must adopt all sanitary recommendations for cleaning up the place, removing other employees in order to avoid the spreading of the virus and providing guidance on the need to seek for medical help.

II. REDUCTION OF WORKING HOURS AND PROPORTIONAL REDUCTION OF SALARY OR SUSPENSION OF ACTIVITIES – EMERGENCY PROGRAM FOR THE PRESERVATION OF JOB AND THE EMPLOYEES’ INCOMES

General Aspects

In July, 6th, 2020, the Provisional Measure no. 936/2020 was converted into the Law no. 14.020/2020, maintaining the companies the possibility of (i.) the reduction of working hours and salaries and (ii.) the suspension of the employment contract by individual negotiation, as well as the implementation of the already known “Emergency Program for the Preservation of Job and the Employees’ Incomes”.

The agreements for the reduction of working hours/salary and for the suspension of the employment contract, whether individual or collective agreements, that were agreed according to the rules of the Provisional Measure no. 936/2020 are still being ruled by its dispositions. However, if a collective bargaining is signed in accordance to the new law and a conflict of rules arises, the terms and conditions of the law will supersede those previously agreed upon an individual agreement.

In case of a collective bargaining agreement is established afterwards, the terms and conditions presented in individual agreements shall apply until the collective bargaining is in force. After the effectiveness of the collective bargaining, in case of a conflict, all terms and conditions established in such document shall prevail over the terms and conditions presented in the individual agreement. However, if the terms and conditions of the individual agreement, established in accordance to the law, are more favorable to the employee, those shall supersede the conflicting terms and conditions presented in the collective bargaining agreement.

The Provisional Measure no. 936/2020 ruled that the reduction of working hours and salary could be implemented in a limit of 90 days and the suspension of the employment contract could last for up to 60 days. According to Law no. 14.020/2020 and to the Decree n° 10.422, of July 13th, 2020, that regulated the previously mentioned Law, both measures (reduction and suspension) can be applied for up to 120 days. Also, this deadline can be extended by a new act of the Government.

One of the most important measures of the Emergency Program for the Preservation of Job and the Employees' Incomes is the payment of the "Emergency allowance for the Preservation of the Job and employees' incomes" or "emergency allowance", to be paid by the Federal Government in amounts based on the unemployment insurance and which should be paid monthly to employees in both cases of temporary suspension of the employment contract or proportional reduction of working hours and salary. The regulation of the Law no. 14.020/2020 also applies to the apprentices, rural, domestic and freelance worker contracts. Regarding to the workers who work on demand, the article 18 establishes that they will be entitled to the monthly emergency allowance in the fixed amount of R\$ 600.00 (six hundred reais) for a period of three months.

In both temporary suspension or reduction of working hours and salaries by individual agreement, the employer is required to obtain the written consent of the employee within 2 (two) consecutive days.

Also, according to the Law no. 14.020/2020, the temporary employment tenureship was maintained, since employees cannot be dismissed without cause during the period of suspension of the contract or reduction of work hours/salary and also cannot be dismissed for an equivalent period of time after the end of the suspension or reduction period, under the penalty of payment of an indemnity, which can vary from 50% to 100% of the salary which the employee would be entitled to receive during the period of the temporary employment tenure, in addition to the severance pay ordinarily established by law in any termination. Specifically in relation to pregnant workers, the Law establishes specific rules of temporary employment tenureship. Besides the period of tenureship according to the reduction or suspension, there will be a temporary employment tenureship equivalent of this period that begins counting after the ending of the temporary employment tenureship granted by law to pregnant woman (that starts when the pregnancy is confirmed and goes up to 5 months after childbirth – art. 10, II, "b", Transitory Constitutional Disposition Act (ADCT).

Receiving the "emergency allowance" do not prevent the concession and do not change the amount of the unemployment insurance which the employee is entitled to receive in case of termination of the employment agreement, provided that the requirements set forth in Law no. 7.998/1990 are fulfilled at the time of the dismissal.

It is also worth mentioning that, according to article 9 of the aforementioned Law no. 14.020/2020, the monthly compensatory allowance spontaneously paid by the employer, in both cases of suspension or reduction of work hours/salary, does not integrate the calculation basis of (i.) the Social Security contribution and other taxes on the payroll, (ii.) the personal income tax of the beneficiaries and (iii.) the amount due to the Employees' Severance Indemnity Fund (FGTS). Also, the article 9 determines that the amount paid as compensatory allowance can be deducted for purposes of calculating the IRPJ (corporate income tax) and CSL (contribution on profits).

Still, in cases of a collective bargaining agreement, the Law no. 14.020/2020 simplified the rules for calling, deliberating, deciding, formalizing and publicizing a convention or a collective bargaining agreement by authorizing the use of electronic ways in order to comply with these requirements, as well as reduce the deadlines by half.

Lastly, the Law no. 14.020/2020 establishes that when the individual agreements have to be executed with employees that are outside the pre-defined salary ranges – in other others, that have salaries above R\$ 2,090.00 in companies with gross revenue superior to 4.8 million

reais in 2019, or above R\$ 3,090.00 in companies with gross revenue equal or inferior to 4.8 million reais, and that are not considered “hypersufficient” or “high level employees” – the agreement will only be valid if the companies pay a monthly compensation that, in addition to the emergency allowance paid by the Government, plus the new salary established in the agreement, ensures the receiving of a monthly amount which cannot be inferior to the previous salary received by the employee.

Specific Aspects

I. Suspension of the employment contracts: The Provisional Measure no. 936 established the possibility of suspension of the employment contracts for up to 60 days. Since the enforcement of the Law no. 14.020/2020 and Decree no. 10.422, the employment contracts can be suspended for up to 120 days, in successive or interspersed periods of, at least, 10 days each. During the suspension period, the employees are not allowed to work and they receive the “emergency allowance”, paid by the Government. This deadline can be extended by a new act of the Government.

- For employees earning up to R\$ 2,090.00/monthly (two thousand and ninety reais), when the company's gross revenue goes higher than R\$ 4.8 million in 2019, or up to R\$ 3,135.00/monthly (three thousand a hundred thirty five reais) or whose salary is higher than R\$ 12,202.12 (twelve thousand two hundred and two reais and twelve cents), the suspension can be negotiated upon an individual written agreement, but it is necessary to inform the Labor Union within 10 consecutive days. In the last case scenario (employees whose salary is higher than R\$ 12,202.12) it is also necessary that they hold a second level school degree;
- For employees whose salaries goes from R\$ 3,135.00 (three thousand a hundred thirty-five reais) to R\$ 12,202.12 (twelve thousand two hundred and two reais and twelve cents) the suspension of the labor contract must be executed upon a collective bargaining agreement;
- During the suspension of the employment contracts period, the employees will receive the “emergency allowance” according to the companies’ earnings: (i.) 100% of the value of the unemployment insurance to those who would be entitled for when the company's gross income goes up to R\$ 4.8 million (maximum); or (ii.) 70% of the value of the unemployment insurance to those who would be entitled for when the company's gross revenue goes higher than R\$ 4.8 million, plus a monthly compensatory aid of 30% of the employee's salary that has to be paid by the company and that also will have indemnification nature. During the period of suspension, companies must keep the benefits that usually grant to their employees such as food vouchers and health insurance;
- Besides the “emergency allowance” paid by the Government, companies can provide for an extra allowance, higher than 30%, which will also not have a salary nature but indemnification nature, whose value can be defined by individual or collective bargaining agreements;
- During the period of suspension, the employees are not allowed to work, not even part-time, under the penalty of companies being compelled to pay the salary and social taxes from all the period, besides other penalties under law or collective agreement;

- The Law no. 14.020/2020 establishes that the employer can organize the suspension of the employment agreements based on its sectors or departments, partially or totally.

II. Temporary reduction of working hours and salary: The Provisional Measure no. 936/2020 provided the possibility of proportional reduction of working hours and salary up to 90 days. Since the enforcement of the Law no. 14.020/2020 and Decree no. 10.422, the term was extended to 120 days. During this period, the employee has his/hers salary and working hours reduced, and can receive the “emergency allowance”, paid by the Government. This deadline can be extended by a new act of the Government.

- Possibility of proportional reduction of working hours and salary in percentages of 25%, 50% or 70%, in which the hourly amount has to be preserved;
- For employees earning up to R\$ 2,090.00/monthly (two thousand and ninety reais), when the company’s gross revenue goes higher than R\$ 4.8 million in 2019, or whose salary is higher than R\$ 12,202.12 (twelve thousand two hundred and two reais and twelve cents), the reduction can be negotiated upon an individual written agreement, but it is necessary to inform the Labor Union within 10 consecutive days. In the last case scenario (employees whose salary is higher than R\$ 12,202.12) it is also necessary that they have a second level school’s degree;
- For employees whose salaries goes from R\$ 3,135.00 (three thousand a hundred thirty five reais) to R\$ 12,202.12 (twelve thousand two hundred and two reais and twelve cents), when the reduction of salary is higher than 25%, it must be executed by a collective bargaining agreement;
- During the period of reduction of salaries, employees will receive an equivalent benefit of 25%, 50% or 70% of the unemployment insurance that they would be entitled for if dismissed, according to the percentage of the salary reduction;
- Besides the “emergency allowance” paid by the Government, companies can provide for an extra allowance, which will also not have a salary nature but indemnification nature, whose value can be defined by individual or collective bargaining agreements. From a tax perspective, the enacted text maintained the provision that the extra compensatory aid will be considered as a deductible expense on the determination of the real profit and of the calculation basis of the Social Contribution on Net Profit. On the other side were vetoed the PLV no 15/2020 provisions that provided the deduction of such values from the self-employment and domestic income, and from the rural activity result calculation for the purpose of income tax.

Furthermore, the Law no. 14.020/2020 established some additional issues not provided by the Provisional Measure no. 936, such as:

- During the calamity period the unjustified dismissal of disabled workers is prohibited;
- The article 486 of the Brazilian Labor Law (the so-called “Fato do Príncipe”) does not apply to the hypotheses of suspension or stoppage of the corporate activities by public authority act;
- The employer can bargain the workers proportional reduction of working hours and salary of the employment agreements by sectors, departments, partially or totally.

The President of Brazil can extend the employment agreement suspension and proportional reduction of working hours and salary terms.

III. PROVISIONAL MEASURE NO. 927/2020

The Provisional Measure no. 927/2020 was enacted on March 22nd, 2020, and established some alternative measures so that the companies could avoid employee dismissal and safeguard the continuity of the business activities, such as: (i.) the employer is allowed to grant collective vacation, without notification to the Union and suspension of the limits established at the Brazilian Labor Law. The only requirement for that is to notify the employees at least 48 hours in advance; (ii.) anticipation of individual vacation and term extension for the payment of the additional 1/3 (vacation bonus until December; (iii.) non-religious holidays anticipation and compensation by the bank of hour system (iv.) institution of a collective bank of hour system. The compensation must be executed within 18 months maximum after the end of the state of calamity; (v.) suspension of administrative requirements regarding to safety and occupational health; (vi.) postponement of the Contribution to the Employees' Severance Indemnity Fund (FGTS) related to March, April and May of 2020 and the possibility of payment upon the maximum of 6 monthly instalments starting on July of the same year; (vii.) possibility of extend employees of health establishments regular working shifts and pay the overtime hours like regular hours upon individual written agreement, possibility of adopting additional shifts between the thirteenth and the twenty-fourth hour of the rest between shifts, guaranteeing the remunerated weekly day off; (viii.) extension of collective bargaining agreements and individual agreements that expire within 180 (one hundred and eighty) days after the publication of the Provisional Measure no. 927, for a period of 90 days; (ix.) paid leave for employees removed from work without harm to their salary for reduce the costs related to transportation and food for employees as well as maintenance of working facilities; and (x.) orientations to the Labor Auditors from the Ministry of Economy have to act in a guiding way, except in severe cases.

However, the Provisional Measure no. 927/2020 was not converted into Law and lost its effectiveness on July 19th, 2020.

The Congress has a 60 days term, counting from July 19th, 2020, to edit a legislative decree regulating the acts practiced during the Provisional Measure no. 927 period, and if there is no edition, the Brazilian Federal Constitution provides that the legal acts constituted during the Provisional Measure period shall remain been ruled by its provisions (article 62, §3º c/c § 11, CF).

TAX

FEDERAL LEVEL:

Until September 30, zero rate for IPI (Tax on Industrialized Products) ([Decree no. 10.285/2020](#) and [Decree 10.302/2020](#)) and Import Tax ([Camex \(International Chamber of Commerce\) Resolution No. 17/2020](#), [Camex Resolution No. 22/2020](#) and [Camex Resolution No. 28/2020](#)) for products employed in the fight against the coronavirus pandemic.

In the period between April 1 and June 30, reduction by half of contributions to social service provision (Third Parties) ([Provisional Measure No. 932/2020](#)). The resulting rates are as follows: 1) Sesi, Sesc and Sest: 0.75%. 2) Senac, Senai and Senat: 0.50%. 3) Senar: (a) 1.25% of contributions levied on payroll; b) 0.125% of contributions levied on revenue from agricultural commercialization due by farmers as legal persons and by agribusinesses; and (c) 0.10% of contributions levied on agricultural commercialization due by farmers as natural persons and as workers covered by social security. 4) Sescop: 1,25%.

Extension of deadlines for federal tax payment within the scope of Simples Nacional (Simplified Taxation System) from reference months of March, April and May 2020 to October, November and December 2020, respectively, by [Resolution CGSN \(Simples Nacional Management Committee\) No. 152/2020](#).

However, this resolution was revoked by Resolution [CGSN n° 154/2020](#), which provides for the extension of maturity date depending on the tax type. Thus, IRPJ (Company Income Tax), IPI, CSLL (Social Contribution on Net Income), COFINS (Contribution to Social Security Financing), PIS/PASEP (Employees' Profit Participation Program) and CPP (Employer Union Contribution), including MEIs (Individual Micro Entrepreneurs) with annual gross revenue equal to or less than R\$ 81,000.00/year on March, April and May 2020 will mature, respectively, in October, November and December 2020. ICMS and ISS (Service Tax) with maturity dates in March, April and May will be extended to July, August and September 2020, respectively.

Exemption of FGTS (Government Severance Indemnity Fund for Employees) payment by employers in reference months of March, April and May 2020 ([Provisional Measure 927/2020](#), articles 19 to 25; [CEF \(Federal Savings Bank of Brazil\) Memo No. 893](#)).

Extension of validity for certificates issued jointly by the Federal Revenue Service and the PGFN (National Treasury Attorney's Office) with respect to federal tax and Active Federal Debt, which they manage, to up to 180 days as of the date of certificate issuance, with possible further extension via joint act by the Federal Revenue Service and the PGFN ([art. 37 of Provisional Measure 927/2020](#)).

90-day extension of validity for CNDs (Tax Clearance Certificate) and CPD-ENs (Suspended Tax Liability Certificates) active on March 24, 2020 ([Joint Ordinance RFB \(Federal Revenue Service of Brazil\)/PGFN n° 555/2020](#)).

Extension of deadlines for submitting the Annual and Quarterly Statement of Brazilian Capital Abroad ([BACEN \(Central Bank\) Memo No. 3.995/2020](#)).

90-day suspension for deadlines in progress as of March 16, 2020 or starting after that date, to object or appeal against decision ruled pursuant to the Administrative Procedure for Recognition of Responsibility - PARR ([PGFN Ordinance n° 7.821/2020](#), art. 1, section I and single paragraph). Deadline time count will resume after the end of the 90-day period. Even with the stopped deadline, taxpayers will be able to carry out their duties via portal REGULARIZE.

90-day suspension for deadlines in progress as of March 16, 2020 or that start after that date, to file statements of discontentment or appeal against ruling within the scope of the process of exclusion from the Special Tax Regularization Program - PERT ([PGFN Ordinance No. 7.821/2020](#), art. 1, section II and single paragraph). Deadline time count will resume after the end of the 90-day period. Even with the stopped deadline, taxpayers will be able to carry out their duties via portal REGULARIZE.

90-day suspension for deadlines in progress as of March 16, 2020 or that start after that date, for advance guarantee offers in tax enforcement proceedings, submission of Recorded Debt Revision Claims - PRDI and appeals against any decision to reject it ([PGFN Ordinance No. 7.821/2020](#), art. 1, section II and single paragraph). The PGFN will carry on recording federal and FGTS debts.

However, sending the first collection letters will be suspended. Deadline suspension applies even to those who have already received the letter or will receive it in the period. The services are still available on portal REGULARIZE during the suspension period for immediate use.

As of March 18, 2020, 90-day suspension of the presentation of active debt certificates of protest ([PGFN Ordinance No. 7.821/2020](#), art. 2, section I). However, already protested debts will remain so until settled through payment, installment payment program, or settlements.

As of March 18, 2020, 90-day suspension of establishing new Administrative Procedures for Acknowledgment of Liability - PARR ([PGFN Ordinance No. 7.821/2020, art. 2nd, section II](#)). During this period, letters will not be sent, and notices will not be published.

The letters eventually received during the period or with ongoing deadlines will have their deadlines for statement suspended, but taxpayers may raise an objection immediately, at their discretion.

As of March 18, 2020, 90-day suspension of establishing procedures for waiving taxpayers from PGFN-managed installment programs due to default of installment payment ([PGFN Ordinance No. 7.821/2020, art. 3rd](#)). During this period, letters will not be sent, and notices will not be published. The letters eventually received during the period or with ongoing deadlines will have their deadlines for statement suspended, but taxpayers may raise an objection immediately, at their discretion. It should be warned that, at the end of this period, taxpayers who have overdue installments will be excluded from instalment programs.

Deadline suspension for the practice of procedural acts within the RFB scope, from March 23 to May 29, 2020 ([RFB Ordinance No. 43/2020](#), art. 6), unless tax credit may have expired or extinguished or the acts are related to special procedures for checking origin of funds invested in foreign trade operations and fighting straw purchasing or procedures resulting from operations to fight smuggling and embezzlement, or other actions to prove red-handed conduct of tax infringement ([RFB Ordinance No. 543/2020, art. 8](#)).

Suspension of the following administrative procedures, from 23 March to 29 May 2020: a) automated electronic issuance of collection notice and subpoenas for tax payment; b) individual's tax audit notice; c) procedure for taxpayers' exemption of installment program due to payment default of installments; d) record of pending regularization in the Individual Taxpayer Registry (CPF) due to the absence of a statement; e) record of inefficiency in the National Register of Legal Entities (CNPJ) due to the absence of a statement; and f) electronic issuance of decision-making orders with merit analysis in Reimbursement and Refund claims and Collection Statements ([RFB Ordinance No. 543/2020](#), art. 7), unless tax credit may have expired or extinguished or the acts are related to special procedures for checking origin of funds invested in foreign trade operations and fighting straw purchasing or procedures resulting from operations to fight smuggling and embezzlement, or other actions to prove red-handed conduct of tax infringement ([RFB Ordinance No. 543/2020](#), art. 8).

Extension of minimum amount reduction of installment values in installment programs as provided for in [Act No. 10.522/2002 \(RFB/PGFN Joint Ordinance No. 895/2019](#), amended by [RFB/PGF Joint Ordinance No. 541/2020](#)).

Institution of Extraordinary Settlement of debts recorded as Overdue Tax Liability, managed by PFGN. Extraordinary Settlement provides for the possibility of paying debts in up to 81 installments, after down payment of 1% of the total debt amount, which can also be divided into 3 installments ([Ordinance No. 7.820/2020](#)). The deadline for joining the Extraordinary Settlement is that of Provisional Measure No. 899/2019, which, considering the Conversion Bill passed in the Federal Senate on March 23, will remain in effect until the referred act is sanctioned or vetoed by the President of the Republic ([Ordinance No. 8.457/2020](#)).

Suspension of the CARF trials in April 2020 ([Ordinance CARF \(Tax Revenue Administrative Council\) n° 7.519/2020](#)) and suspension of deadlines for practicing procedural actions within the CARF scope until April 30, 2020 ([Ordinance CARF n° 8.112/2020](#)). The March 2020 CARF trial sessions were suspended by court order ([Collective Injunction No. 1014772-67.2020.4.01.3400](#)).

Rules for replacing original documents with scanned documents ([Decree No. 10.278/2020](#)).

As to the IOF levied on credit operations, the rate is zero in operations contracted between 4/3/2020 and 7/3/2020 ([Decree 10.305/2020](#)).

[Act 13.988/2020](#), which converted the MP of the Legal Taxpayer (PM 899/2019) into an act, provides, among other measures, for the Union and its autarchies and foundations to carry out transactions for the collection of tax or non-tax credits from the Public Treasury, with the possibility of offering benefits such as i) interest discounts, arrears and legal charges; ii) special payment terms and methods and; iii) replacement or sale of guarantees and liens.

Extension of deadlines for submission of DCTF (Federal Tax Contributions Statement), originally scheduled for April, May and June, for the 15th business day of July 2020, and extension of delivery of the Digital Tax Contribution Bookkeeping for PIS/PASEP, COFINS and EFD (Digital Fiscal Bookkeeping) - originally scheduled for the months of April, May and June - for the 10th business day of July 2020. ([Normative Instruction RFB n° 1932/2020](#)).

The PIS/PASEP and COFINS taxes, in the cases listed in the Ordinance, had their original payment periods of 4/24/2020 and 5/25/2020 extended to 8/25/2020 and 10/23/2020, respectively ([Ordinance ME n° 139/2020](#) - amended by [Ordinance n° 150/2020](#)). Listed cases are: Contributions due by companies which are destined to Social Security; contributions due by agribusinesses; contributions due by the individual rural employer; contributions due by the employer to Social Security as a legal entity dedicated to rural production; and contributions owed by the domestic employer.

Zero rate of contributions to PIS/PASEP, to the Financing of Social Security - COFINS, to PIS/PASEP-Import and to COFINS-Import levied on revenue resulting from domestic market sales on the import operation of zinc sulfate for drugs used in parenteral nutrition. ([Decree No.10.318/2020](#))

CUSTOMS:

Simplification and streamlining of customs clearance process for imported goods destined to fight -19. In the same normative act, the RFB included imports promoted by importers certified in the AEO (Authorized Economic Operator) modality in a more simplified import process. These measures are important to avoid bottlenecks in customs areas by speeding up cargo delivery, in addition to maintaining a fast flow of goods supply to fight the pandemic. ([IN RFB n° 1.927/2020](#)).

Until September 30, 2020 zero rate of Import Tax for 50 medical and hospital products needed to fight the new coronavirus pandemic. It was also determined that entities of the Federal Public Administration that perform activities of licensing, control or inspection of imports of these items adopt priority treatment for the release of goods ([CAMEX Resolution n°17/2020](#)).

Requirement for a special export license for products to fight new coronavirus ([Ordinance SECEX n° 16/2020](#); [Notícia Siscomex-Exportação n° 0008/2020](#)).

Suspension of import licensing requirement for disposable syringes and plastic blood collection tubes ([Ordinance SECEX n° 18/2020](#); [Notícia Siscomex-Importação n° 0014/2020](#)).

Exemption from the Inmetro (Metrology Institute) consent to import goods classified under NCM (Common Mercosur Nomenclature) 8214.90.90 (Other metal-based cutlery articles, and their parts), 8419.89.19 (Other sterilizers) and 8419.89.20 (Ovens) ([Siscomex-Import News No. 0013/2020](#)).

MUNICIPAL/STATE LEVEL

Important tax relief measures taken to date

There are specific initiatives, but few have an effective impact on company cash flow (perhaps with the exception of the Municipality of Belo Horizonte). A few examples:

- São Paulo (State and Municipality) suspended administrative trials (Tax Court and Municipal Tax Council), for example. Deadlines for state administrative proceedings are still on, whereas municipal ones have been provisionally suspended for 30 days.

- State of São Paulo - 90-day suspension for debts registered as overdue tax liability ([Decree 64879/20](#)). The validity of Tax Clearance Certificates has been extended for 90 days, due in the period between 03/01/2020 and 04/30/2020 ([Joint Resolution SFP/PGE nº 1](#)).
- State of Rio de Janeiro - Suspension of collections of debts registered as overdue tax liability ([Decree nº 46.982/2020](#)). Extension of validity for Tax Clearance Certificates issued by PGE ([Resolution PGE nº 4.527/2020](#)). Extension of payment term of installment credits registered as overdue tax liability ([Decree Nº 46.982/2020](#)).
- Settlement - Municipality of SP [Act 17.324/18.03.2020](#) (Policy for Easier Access to Justice within the scope of Direct and Indirect Municipal Public Administration) - allows to sign agreements for the consensual solution of controversy over waivable rights or unwaivable rights that admit settlement - Payment of limited debts up to the amount of R\$ 510,000,00 (five hundred and ten thousand reais) for tax and non-tax debts, in monthly and successive installments, not applying to agreements signed in previous Incentive Installment Programs – PPI.
- The Federal District attempted to reduce the ICMS tax rate (from 18% to 7%) for some products (alcohol gel, supplies for making alcohol gel, medical gloves, medical masks etc.) but was stopped by CONFAZ, so an injunction was obtained.
- The State of Maranhão included the same products in the list of food staples, which have a tax rate of 12%, in spite of CONFAZ.
- The State of Piauí has a similar project in progress with the Legislative Assembly, without CONFAZ authorization.
- The State of SC requested CONFAZ authorization to reduce the tax rates levied on the same products to 7%.
- The State of ES extended deadline for EFD (Digital Fiscal Bookkeeping) delivery and for the filing of objections and appeals to CERF (State Tax Revenue Council)/ES (Decree No. 4603-R).
- The Municipality of Belo Horizonte deferred tax payment (fees, IPTU [Municipal Property Tax] 90-day extension) in addition to 100-day extension of deadlines for complying with ancillary tax obligations related to ISSQN (Municipal Service Tax). These measures are aimed at companies in some sectors, such as shopping centers, gyms and bars, (Decree nº 17.308/2020). 90-day deadline for requesting to join an extraordinary installment program of credit registry of overdue tax liability.
- The Rio Grande do Norte State granted a 90-day extension as of issue date of certificate validity for the Joint Tax Clearance Certificate related to State Tax and to State Tax Overdue Liability, and the Joint Certificate of Suspended Tax Liability related to the State Tax and to State Overdue Tax Liability ([Decree No. 29.599/2020](#))

A few suggestions

What State and Municipal governments could do:

- Facilitate ratification/use of accumulated ICMS credits. Facilitate the ICMS ST (Tax Substitution) reimbursement procedures, especially for supermarkets and retailers in general, when they sell below the deemed profit margin provided for in the legislation.
- Facilitate/simplify the granting of special regimes that allow to simplify ancillary obligations and/or extend document delivery deadlines.
- Seek/expand the use of alternative and quick means for conflict resolution (tax transaction)
- CONFAZ - implement homogeneous measures to deal with the crisis, such as extending/exempting ICMS, reduction of tax rates for products destined directly or indirectly to fight the new coronavirus. The president of CONFAZ signaled that a possible exemption of ICMS payment would depend on the injection of resources from the federal government to offset losses (a dispute between governors and the federal government should be an obstacle to measures such as tax exemption).

What companies could do:

- Revisit their litigations to take advantage of the effect of injunctions already granted. Revisit the use of ICMS credits.
- Revisit theories such as ICMS selectivity, mainly to large consumers of energy and telecommunications services. Examine the possibility of expanding the discussion to other products that are essential at this time (which cannot be credited e.g. service providers).
- Companies are also taking measures to increase their tax efficiency, such as reviewing the inputs for which PIS and COFINS credits are taken, based on STJ (Superior Court ruling in [Special Appeal No. 1.221.170](#) or revising items on which social security contributions are levied. Another measure is the analysis of remedies to discuss taxes levied on the amounts used for their calculation, including anticipating exemption of tax collection or reduction of its value. These are measures that help to reduce the taxes due and, consequently, can help preserve business cash flow and revenue.

POTENTIALLY USEFUL MEASURES

I - To assist companies' cash flow:

- a) extended tax deadlines, especially for taxes levied on payroll, and joining an instalment program for paying taxes with extended due date.
- b) suspension of payment of tax debt installments.
- c) suspension of existing restrictions for offsetting tax credits (including prepayments of IRPJ and CSLL and offsetting credits from periods prior to e-Social (Digital Tax Bookkeeping System for Social Security and Labor Tax Obligations) with social security debts after e-Social).

- d) relief on the 30% limit on the use of Tax Losses and the Negative CSLL Calculation Base.
- e) development of a fast-track mechanism for approval of tax credit refund claims [the analysis of these claims was suspended by RFB Ordinance No. 543/2020, art. 7; I think the best thing would be to maintain the analysis, since, if the outcome is favorable to taxpayers, they will be entitled to it; on the other hand, if the outcome is unfavorable, the time for defense will have been suspended.
- f) creation of a fast-track mechanism for tax payment in instalments.
- g) creation of a fast-track mechanism to make credit available to be settled before the RFB.
- h) replace accrual basis with cash basis.
- i) suspension of tax replacement regimes onwards.
- j) suspension of equity constraints, especially online and billing liens.
- k) permission to withdraw court deposits and/or their replacement with other types of guarantee.
- l) suspension debts to be registered in CADIN - Informative Database of Unpaid Credits - which could prevent companies from receiving amounts from public agencies and obtaining loans.
- m) foreign exchange variation - accrual basis versus cash basis: flexibility of rules for changing bases (cash or accrual) for the year 2020 (with special focus on quarters), with final choice to likely occur in December 2020, to minimize the impacts of exchange rate volatility.
- n) anticipation of IRPF refund.

II - Contribution to compliance with isolation measures:

- a) extension of deadlines to delivery ancillary obligations (filling the corresponding forms is quite laborious and requires the use of computer structures to which companies may not have full remote access).
- b) suspension of fines for default/incurrence of accessory obligations.
- c) automatic extension of maturity terms and/or renewal of issuance of Tax Clearance and/or Suspended Tax Liability Certificates, as well as other Tax Clearance certificates of state, municipality and FGTS taxes.
- d) allow communication with Federal, State and Municipal bodies to be carried out by digital means (electronic mailboxes and/or electronic tax domiciles) in addition to face-to-face communication.
- e) flexibility of states to authorize issuance of Electronic Tax Documents.



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