

BILL 1,179/2020: PRIVATE-LAW RELATIONS DURING THE COVID-19 CRISIS

Bill No. 1,179/20, which adapts private law legal relationships (contractual, corporate, real estate, and agricultural, among others) during the covid-19 crisis, is proceeding for presidential signature. The matter was sent to the Office of the President for signature on May 21, and this is expected to occur by June 10 of this year.

The text approved follows the terms of the substitute presented by Senator Simone Tebet (MDB-MS) for the text initially prepared by the President of the Federal Supreme Court (STF), Justice Dias Toffoli, and presented by Senator Antonio Anastasia (PSD-MG).

The proposal approved is transitional and emergency in nature and considers the beginning of the pandemic to have occurred on March 20, 2020. In this spirit, the draft establishes a series of rules that modify Brazil's legislation on a transitional basis. Among other measures, the proposal:

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SUSPENDS OR PREVENTS THE RUNNING OF THE PERIODS FOR PEREMPTION AND THE STATUTE OF LIMITATIONS, from the entrance into force of the legislation until October 30, 2020.



IN THE OPERATION OF LEGAL ENTITIES, it establishes that, until October 30, 2020, face-to-face meetings and assemblies in the scope of associations, foundations, and companies must respect the health restrictions of the local authorities, expressly providing that general meetings may take place by electronic means, including for the purposes of statements and responses by participants, which must have the same effects as statements and responses with in-person signature, regardless of provision in the corporate documents of the legal entity.



WITH REGARD TO TERMINATION, RESCISSION, AND REVISION OF CONTRACTS, it provides that the consequences arising from the pandemic will not have retroactive effects for purposes of default due to unforeseeable circumstances or force majeure, and that the impacts of inflation, foreign exchange rate variation, or devaluation and replacement of the exchange rate standard arising from this situation cannot be considered unforeseeable for the exclusive purposes of the Civil Code (force majeure, unforeseeable circumstances, or theory of unpredictability).



IN CONSUMER RELATIONS, it establishes that the rules for arguing situations of force majeure, unforeseeable circumstances, acts of God, or theory of unpredictability cannot be applied in the context of consumer relations, in addition to suspending the right of buyer's remorse and withdrawal periods for products and services delivered at home until October 30, 2020.



IN LEASE AGREEMENTS, the granting of injunctions for eviction from urban real estate is suspended until December 31, 2020, within the scope of the eviction proceedings up to March 20, 2020.



AS FOR ADVERSE POSITION, accrual periods are suspended until October 30, 2020.



IN BUILDING CONDOMINIUMS, the owners association's powers are extended to restrict (a) the use of common areas to prevent covid-19; and (b) private areas for meetings, festivities, and the use of vehicle shelters by third parties. In no case may medical access and care be restricted. In addition, owners association meetings may take place on an emergency basis, in an electronic manner, whereby the statements and responses by the parties must also have the same validity as that done in person. All measures are also valid until October 30, 2020.



AS REGARDS COMPANIES
• Suspension of all deadlines for the holding of general and other meetings of any corporate bodies, whether in person or not. As for publicly-held companies, it is established that the CVM will specifically provide on the time periods to be applied.
• As for general meetings, they may be held virtually or in person, in a place different from that established by law, as long as local health legislation is observed. With regard to business companies and listed corporations, the CVM and the National Department of Business Registration and Integration shall be responsible for regulating the holding of such meetings in order to protect their partners or shareholders.

• With regard to the distribution of income, it was determined that dividends and other proceeds, even if on profits indicated in the balance sheet prepared for previous fiscal years, but not yet approved by the partners or shareholders of the companies, as the case may be, may be declared during the fiscal year of 2020 by the competent body.



IN COMPETITION LAW, some practices prohibited by Law 12,529/11 are suspended (article 36, XV and XVII), among them:
• Selling goods or rendering services unjustifiably below cost price;
• Partially or totally ceasing the company's activities, without just cause, while the other infractions of article 36 should be analyzed with a view to the pandemic situation, when performed during the period of applicability of the law. Finally, application of the provision that defines the execution of an association contract as an act of concentration (and article 90, IV, of Law No. 12,529/11 - article 21, of the Bill).



IT PROVIDES THAT THE EFFECTIVE DATE OF THE GENERAL DATA PROTECTION LAW, for imposition of sanctions, will occur in August of 2021. Thus far, the effective date of the LGPD continues to be postponed to May 3, 2021, as per MP No. 959/2020, which is pending deliberation in the Brazilian Congress.



IN PRIVATE PAID TRANSPORTATION AND DELIVERY SERVICES BY MOBILE PHONE APPLICATION, there must be a reduction in the percentage of retention of the value of the trips by at least 15%, ensuring the transfer of this amount to the driver or deliverer.



IT ESTABLISHES THAT THE RULES OF THE BRAZILIAN TRAFFIC CODE may be relaxed by the National Transit Bureau (Conatran) to optimize efficiency in the logistics of transportation of goods and inputs and in the provision of services related to combating the effects of the pandemic.



Senator Simone Tebet emphasized orally that the proposal does not deal with relations between consumers and public service providers, which depend on the actions of regulatory agencies, nor with bankruptcy and judicial reorganization issues, nor with labor or health legislation. These topics may be addressed in specific bills.

If the matter is vetoed, in whole or in part, by the Brazilian President, the bill will return to the Brazilian Congress for further deliberations.

CONTACTS

MARIA FLAVIA SEABRA
PARTNER
mseabra@machadomeyer.com.br
+ 55 11 3150-7428

JOÃO REIS
PARTNER
jreis@machadomeyer.com.br
+ 55 61 2104-5570

IVANA COELHO BOMFIM
PARTNER
ibomfim@machadomeyer.com.br
+ 55 21 3572-3027

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