

Covid-19: Law regarding private legal relations in the pandemic period published

On June 12th, 2020, Law No. 14.010 was published (“Law No. 14.010/20”), which sets forth an emergency and transitional legal regime regarding private legal relations during the COVID-19 pandemic.

The original text, initially presented to the Brazilian Senate on March 31st, 2020, as Legislative Proposal No. 1.179, was prepared with the assistance of several professors from the best law schools in the country and coordinated by Brazilian Supreme Court Chief, Minister Dias Toffoli. After several discussions in the two legislative houses, the final text was sanctioned by the Brazilian President on June 10th, 2020, in which some of the provision were vetoed.

Law No. 14.010/20 suspended the statute of limitations and for the acquisition of property by adverse possession from June 12, 2020 to October 30, 2020 and, in addition, extended the deadline for opening inventory and legal partition procedures of successions commencing from February to October, 2020. Also, within the civil sphere, the application of article 49 of the Brazilian Consumer Defense Code, which sets forth consumer's right of regret, in case of home delivery of perishable or immediate consumption products and medicines, is suspended until October 30, 2020, as well as regular arrests for alimony debtors, which shall only face house-arrests.

As for legal persons under private law, it is worth mentioning that, after several changes in its text and the presidential vetoes, the final version of Law No. 14.010/20

may create different understandings regarding the deadline for holding shareholders' meetings. However, through an interpretation of the law with the vetoes explanations, the term of October 30, 2020 established in its article 5 refers exclusively to associations and foundations meetings. The deadline for shareholders' meetings of limited liability companies, corporations and cooperatives remains the one provided for by Provisional Measure No. 931/2020 (i.e. for companies whose fiscal year ends between December 31, 2019 and March 31, 2020, the shareholders' meetings shall be held within 7 months from the end of the fiscal year).

In the competition law field, it is suspended until October 30, 2020 the possibility of considering the sale of goods or rendering of services unjustifiably below cost price as an infringement of Brazilian Competition Law (article 36, paragraph 3, item XV of Brazilian Law 12.529/11), as well as to partially or totally cease the company's activities without just cause (art. 36, §3, item XVII of Brazilian Law 12.529/11), and the classification of entering into an association, consortium or joint venture agreement between two or more companies as an act of concentration is ineffective until the aforementioned date (art. 90, item IV of Brazilian Law 12.529/11). However, the suspension does not rule out the possibility of subsequent analysis of the concentration act or of investigations on agreements that are not necessary to combat or mitigate the consequences of the coronavirus pandemic.

Finally, with respect to the Brazilian Data Protection Law (Law No. 13.709/2018), Law No. 14.010/20 postponed the entry into force regarding the application of administrative sanctions to August 1, 2021. The entry into

force regarding the other articles is expected, for now, for May 3, 2021, according to Provisional Measure No. 959/2020 (still pending appreciation by Congress).

LAW NO. 14.010/2020 CAN BE ACCESSED IN PORTUGUESE AT THE LINK BELOW:

http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2020/Lei/L14010.htm

Brazilian Department of Business Registration edits Normative Instruction which improves registrations before Boards of Trade

On June 15th, 2020, Normative Instruction No. 81 (“IN DREI 81”) was published, which was issued by the National Department of Business Registration and Integration (*Departamento Nacional de Registro Empresarial e Integração*) (“DREI”), combining in a single document the general rules for public registration of companies in Brazil. The measure was taken with the purpose to simplify and de-bureaucratize business creation, better enabling the business environment for economic development.

We highlight the following news set forth by IN DREI 81:

- **Notarization of signatures and authentication of documents:** the requirement of signatures notarization and documents authentication for filings before the Boards of Trade has been waived, the document may be authenticated by the representative of the respective Board of Trade himself (by means of comparison of the original version with the copy) or by the lawyer or accountant of the interested party presenting a statement of authenticity alongside the documents, as long as such professional has signed the registration request.
- **EIRELI's capital stock:** the payment of the capital stock for the incorporation of an individual limited liability company known as EIRELI shall be immediate

only in relation to the legal minimum amount (i.e. 100 times the highest minimum wage in the country), the amount exceeding such legal minimum can be paid in a future date.

- **Automatic registration:** the filing of an instrument of incorporation, alteration and extinction for individual businessmen, EIRELIs and limited liability companies (except public companies) shall be automatic when (i) prior consultations on the viability of the corporate name and location, when applicable, are completed; (ii) the instrument contains only the standardized clauses contained in the respective manuals edited by DREI; and (iii) the mandatory documents for filing are also presented, also according to the manuals edited by DREI. It is worth mentioning that the automatic registration does not apply to corporate acts which approve transformation, merger or spin-off and capital payment with quotas of another company.
- **Preferred Quotas in Limited Liability Companies:** IN DREI 81 consolidates the doctrinal understanding that it is possible to issue preferred quotas of different classes in limited liability companies, with different political and economic rights (item 5.3.1 of the Limited Liability Company Manual). Furthermore, the understanding that non-voting preferred quotas would not be considered for purposes of installation and deliberation quorums was confirmed.

NEWSLETTER

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IN DREI 81 enters into force on July 1st, 2020, and the automatic registrations will only be effective in October 13th, 2020.

It is not yet clear how the new rules of IN DREI 81 will be applied by each Board of Trade and how the COVID-19 pandemic period could affect their implementation.

IN DREI 81 CAN BE ACCESSED IN PORTUGUESE AT THE *LINK* BELOW:

<http://www.in.gov.br/en/web/dou/-/instrucao-normativa-n-81-de-10-de-junho-de-2020-261499054>