

COVID-19 PANDEMIC - BRAZIL CHAPTER

15/04/2020

As the pandemic promptly changes people's lives and how the global markets function, it is unfortunately becoming clear that fraudsters will try to take advantage of the situation, making the most vulnerable people the victims of all types of frauds, in particular online banking frauds.

After learning the hard lessons from the 2008 global crisis, the Brazilian Federal Government has decided to provide quick liquidity to the local market, including the banking system and many forms of unemployment assistance. The main challenge is to make the financial assistance reach the needed without people going to local branches of the banks, which, as an essential service, are still open but with restrictions.

The Federal Government, in an effort to deliver quick assistance, has ordered the government-owned bank, Caixa Econômica Federal, to open millions of digital bank accounts overnight to aid all Brazilians who require and qualify for government assistance.

As a result, a large part of the Brazilian population that does not have bank accounts or are not familiar with online transactions, became potential victims of fraud overnight.

In addition, a large number of fraud cases have been identified on government contracts to acquire goods during the state of emergency, because municipal, state and federal authorities have been authorized under certain circumstances to waive the proper requirements to conduct an auction to acquire services or goods.

DEADLINES AND COURT MANAGEMENT:

01: Is there special legislation on the effects of the crisis on civil justice?

The National Council of Justice (CNJ), through its Crisis Committee, is the public institution responsible for the judicial management of all Brazilian Justice, and has since issued a number of resolutions to provide guidance to the state and federal courts.

In particular, the CNJ issued Resolution no. 313/2020 which suspends the deadlines on all court proceedings, including state and federal, until 30 of April 2020. It is expected that the suspensions will be extended thereafter.

As the courts houses and tribunals are closed to the public, lawyers and parties are not allowed to visit, but can file electronic petitions and request urgent reliefs when appropriate.

02: Does the crisis have an effect on court hearings? Do court hearings take place in form of video conferences?

Brazilian courts continue to issue orders and judgements, and lawyers are allowed to contact the court and even to request hearings with the judges on a video platform.

A good example is that Supreme Court of Brazil has started this week to hold teleconference hearings that can be followed by anyone via the tool Webex Meetings.

The judgments of appeals before the Courts of Justice are being carried out virtually, but, in these cases, oral arguments are not possible.

On the other hand, most lower court hearings were canceled and will be scheduled for new dates.

03: Does the crisis have an effect on deadlines (of procedural and substantive law)?

All court deadlines are suspended until the 30th of April, subject to further extensions.

The fact that there is a suspension of the deadlines does not mean that proceedings are stayed. All lawyers and parties should continue to comply with court orders, filing motions and petitions electronically. According to the news published by the CNJ website, the number of legal acts performed in the Covid-19 period, including the issuing of rulings by the judges, is equivalent to the acts practiced during regular times.

04: Are deadlines for bringing actions affected (limitation periods)?

As of now, limitation periods continue to run and parties should file electronically all necessary legal measures to avoid the risks relating to the statute of limitations.

It is worth to mention that the Bill of Law n. 1.179/2020 was approved by the Brazilian Senate on an emergency basis and was forward for final approval by the House of Representatives. This legislation provides that all statute of limitations will be suspended until 30th October 2020.

05: Does the crisis have an effect on enforcement? Are enforcement orders issued?

Enforcement orders continue to be issued. If the enforcement is related to urgent relief, the court will be able to notify that party to promptly comply with the order, using police force as well as other enforcement measures as necessary.

Authorities are working on new legislation to suspend all obligations for a period of 60 days from 20 of March 2020, as well as new amendments to the new bankruptcy law.

06: How do courts work during the crisis? Are courts closed?

The buildings of the courts are closed, but the members of the judiciary system are working remotely, so that applications can be filed electronically and hearings can be made by videoconference.

All communications with the administration of the courts are generally being made via email, telephone, or other electronic means as provided by the respective court.

07: How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?

All urgent matters are efficiently handled by the courts. Attorneys can make their oral arguments by scheduling a call or video conference with the judge. When appropriate, freeze orders will be granted.

08: How do lawyers work during the crisis?

Most law firms are working remotely. In some states, law firms are being required to keep their offices close.

09: How do banks work during the crisis?

As an essential service, the banks are open but limiting the amount of people allowed inside the branch at the same time.

10: Does the crisis have an effect on insolvency law?

Brazil was starting to recover from a local financial crisis which started in 2014 and lasted until 2017. This crisis caused many large corporations, in particular those that were accused of corruption by Operation Car Wash of the Federal Police, to file for debtor in possession judicial reorganization. As such, the courts were already handling large reorganization cases, including the case of Odebrecht, with US\$25 billion debt.

As the risk of insolvency increases, the CNJ has issued Recommendation n. 63 which includes the following guidelines for insolvency cases: (i) priority to releases payment to the creditors; (ii) suspension of physical creditors meetings; (iii) extension of the stay period for the debtors in possession cases; (iv) authorization for debtors to present new schemes of payments; and (v) remote supervision of the activities of the debtors by the court appointed trustees.

As reported above, authorities are working on a new bankruptcy law, which will include transnational insolvency.

B. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

Most of the new regulations issued in response to the pandemic will expire following its end.

Whether the economic stimulus package issued by the Brazilian Government will suffice to avoid widespread insolvency is an open question. It is expected that a number of small, medium and large corporations will file for judicial reorganization or bankruptcy, leaving a lot of employees, suppliers and investors unpaid.

Now that lawyers, judges and clerks must work remotely and use technology more than they otherwise would, they can more easily assess how technology, when used appropriately, can help the administration of Justice and the efficient conclusion of legal cases.