



## **COVID-19**

### **Legal Insights no. 37**

Law no. 16/2020, of May 29<sup>th</sup>

Modification of the exceptional and temporary measures of response to the pandemic situation of the disease COVID-19, amending for the fourth time Law no. 1-A/2020, of March 19<sup>th</sup>, for the first time, Law no. 9/2020, of April 10<sup>th</sup>, and, for the twelfth time, Decree-Law, no. 10-A/2020, of March 13<sup>th</sup>

Law no. 16/2020, of May 29<sup>th</sup>, published in the Portuguese Official Gazette, modifies the exceptional and temporary measures of response to the pandemic situation of the disease COVID-19, amending, in consequence, the following legislations: (i) Law no. 1-A/2020, of March 19<sup>th</sup>, (ii) Law no. 9/2020, of April 10<sup>th</sup>, and (iii) Decree-Law no. 10-A/2020, of March 13<sup>th</sup>.

Law no. 16/2020, of May 29<sup>th</sup>, adds article 6-A to Law no. 1-A/2020, of March 19<sup>th</sup>, which foresees a new transitory and exceptional procedural regime, applicable to procedural acts to be performed before judicial courts, administrative and tax courts, Constitutional Court, Audit Court, and all other jurisdictional entities, as well as before arbitration courts, Prosecution Services, justices of the peace, alternative settlement of disputes entities, and entities of tax execution.

Therefore, and according with the referred article, court sessions, as well as other procedural acts which imply the hearing of witnesses shall be carried out in person, and in respect with the ceiling established for the maximum amount of persons allowed at the referred acts, and any other safety, hygiene and sanitary rules, defined by the Portuguese Health Authority (hereinafter as PHA).

For this reason, only when the referred procedural acts cannot be performed as above explained, court sessions and any other procedural acts, which imply the hearing of witnesses shall be carried out through appropriated means of distance communication, namely teleconference, video call, or any other equivalent mean, if possible and appropriated. Nevertheless, this second case shall not be applicable, at the outset, to hearings of the criminal defendants, witnesses or parties, which shall be always performed before the court, unless the parties agree on the contrary, or if any of the procedural players are over than 70 years old, immunosuppressed, or have chronic diseases and, in consequence, and pursuant to the guidelines of the authority health, are considered to be at risk.

On the other hand, in the remaining procedural acts, which require the physical presence of the parties, of their attorneys or other procedural players, the performance of such acts shall be carried out preferably through appropriated means of distance communication, namely teleconference, video call, or any other equivalent. On these cases, it is only when it is not possible to carry out procedural acts through means of distance communication, that they shall be performed in person, in accordance with the ceiling established for the maximum amount of persons allowed at the referred acts, and any other safety, hygiene and sanitary rules, defined by PHA.

Notwithstanding, in all cases in which the attorneys or other procedural players are proven to be at risk, according to the above referred health guidelines, they do not have the obligation to be present at court. Hence, if this right is exercised, the respective hearing or follow-up of the procedural act shall be performed through appropriate means of distance communication, namely teleconference, video call, or any other equivalent, from the respective legal or professional domicile.

Furthermore Law no. 16/2020, of May 29<sup>th</sup>, ensures the presence of criminal defendants at pre-trial and trial sessions in which the statements of the criminal defendant, co-defendant or witnesses are to be heard.

Notwithstanding the legal regime above explained, article 6-A added to Law no. 1-A/2020, of March 19<sup>th</sup>, also clarifies that, during the period of enforcement of this exception and transitory regime, the following

deadlines or acts are suspended: **(i)** the deadline to presentation of the debtor to insolvency, foreseen in article 18 (1) of the Portuguese Insolvency and Corporate Recovery Code; **(ii)** acts to be performed in enforcement or insolvency proceedings related with judicial enforcement of the family residence; **(iii)** eviction proceedings, special eviction proceedings and proceedings for the enforcement of leased immovable assets, when the tenant, upon final decision of the court, may be placed in a fragile situation due to lack of housing or any other relevant compelling reason; **(iv)** limitation and prescription periods regarding to the above referred proceedings and procedurals; **(v)** limitation and prescription periods regarding to the proceedings in which court sessions as well as other procedural acts that imply the hearing of witnesses cannot be performed, at least, through appropriated means of distance communication; **(vi)** limitation and prescription periods in which the remaining procedural acts that require physical presence of the parties, of the attorneys and other procedural players cannot be performed, at least, in person.

For the purposes mentioned in the paragraph above, it shall be also added that, in the cases in which procedural acts related to judicial sales or enforcement of immovable assets; performed in enforcement or insolvency proceedings, may cause loss of livelihood for the defendant or insolvent, the latter may claim the suspension of the performance of the referred act. On the other hand, the court shall decide on the referred claim, within 10 days, and upon the hearing of the parties. It shall be noted, at this regard, that the court shall only suspend the performance of the referred acts, providing that the referred suspension does not cause a serious loss of livelihood for the plaintiff or irreparable damage.

As a consequence of this new transitory and exceptional regime, Law no. 16/2020, of May 29<sup>th</sup>, also revokes articles 7 and 7-A (1) and (2) of Law no. 1-A/2020, of March 19<sup>th</sup>.

In last place, and regarding to administrative judicial deadlines, Law no. 16/2020, of May 29<sup>th</sup>, foresees two different rules, as per the respective original term occurs under the suspension regime established by article 7 (1) of Law no. 1-A/2020, of March 19<sup>th</sup>, or not. Therefore, in the cases in which the administrative judicial deadlines had ended under the suspension regime provided by article 7 (1) of Law no. 1-A/2020, of March 19<sup>th</sup>, if not for the suspension foreseen by the referred regime, they shall terminate on the twentieth business day subsequent to the entrance into force of the present Law.

On the other hand and in what concerns to the administrative deadlines which term would occur after the date in which the present Law entered into force; if not for the suspension of deadlines, they shall terminate **(i)** on the twentieth business day subsequent to the entrance into force of the present Law, if they were due until that date, or **(ii)** in the date in which they would originally terminate, if they were due in date further to the twentieth business day subsequent to the entrance into force of this Law.

However, in what regards to the period of administrative deadlines, Law no. 16/2020, of May 29<sup>th</sup>, underlines that the regime above referred is not applicable to deadlines of the administrative phase, in administrative offense subjects.

As a final note, it is also important to refer that, according to Law no. 16/2020, of May 29<sup>th</sup>, and notwithstanding the above referred regime regarding to the period of administrative deadlines; the

limitation and prescription periods which are no longer suspended, in consequence of the amendments introduced by this Law, are extended by the same period of time of the suspension.

This Law will entry into force on June 3<sup>rd</sup> of 2020.

To access the full text of the Law, click on the following link: <https://dre.pt/web/guest/home/-/dre/134762423/details/maximized>.

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