



COVID-19

Legal Insights no. 53

Suspension of process and procedural deadlines, as a result of the measures adopted in response to the pandemic of the disease COVID-19 and amendment to Law no. 1-A/2020, of March 19th

On February 1st, it was published, in the Portuguese Official Gazette, Law no. 4-B/2021, of February 1st, which (i) establishes a legal regime for the suspension of process and procedural deadlines, as a result of the measures adopted in response to the pandemic of the disease COVID-19, and (ii) amends Law no. 1-A/2020, of March 19th. In this terms, Law no. 4-B/2021, of February 1st, adds articles 5-A, 6-B, 6-C, 6-D and 8-E to Law no. 1-A/2020, of March 19th.

Therefore, in first place, article 6-B added to Law no. 1-A/2020, of March 19th, establishes the suspension of all procedural acts and respective deadlines, which shall 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. Furthermore, and with the same purpose, the above-referred article foresees the suspension of limitation and prescription periods regarding to all the mentioned processes and proceedings, prevailing this suspension over any legal regimes, which establish mandatory maximum limitation and prescription periods, to which shall be added the period of that suspension.

In addition, Law no. 4-B/2021, of February 1st, also stipulates the suspension of the following procedural acts: (i) the deadline for the presentation of the debtor to insolvency, foreseen in article 18 (1) of the Portuguese Insolvency and Corporate Recovery Code, (ii) any acts to be carried-out in enforcement proceedings, except those regarding with payments to be rendered to the creditor, through the product of the sale of the seized assets, and those with the court decides that may cause a serious damage to the creditor and (iii) any acts to be carried-out in insolvency or enforcement proceedings related with judicial enforcement of the family residence.

Notwithstanding the suspension of the deadlines concerning to all the above referred judicial processes and proceedings, Law no. 4-B/2021, of February 1st, establishes that this regime of suspension does not apply and preclude the performance of the following cases:

- (i) All proceedings in the scope of the process regarding to the prior supervision of the Audit Court;

- (ii) To the performance of non-urgent processes in higher courts, providing that all procedural parties accept and expressly state that they have all the necessary condition to carry-out in person procedural acts through proper means of distance communication;
- (iii) To the performance of procedural acts, in the scope of non-urgent processes and proceedings, whenever all procedural parties accept and expressly state that they have all the necessary conditions to carry-out those acts through IT platforms which allow the execution of the referred acts electronically or by proper means of distance communication, such as teleconference, video call, or any other equivalent;
- (iv) Final decisions in all processes and proceedings, in which the courts and other entities decide that it is not necessary the performance of further procedural acts, cases in which the deadline to appeal, or to claim from procedural irregularities or minor mistakes of the final decision, is not suspended;
- (v) Special administrative proceedings, qualified by law as urgent, provided that it shall be possible to assure the performance of procedural acts by means of distance communication;
- (vi) Public procurements/tendering processes, in the scope of the judiciary system, foreseen in the respective bylaws, as well as administrative proceedings regarding to applications to judicial, administrative and tax magistrate system, and to Prosecution Services;
- (vii) Proceedings of public procurement;
- (viii) Proceedings regarding to the Public Auction for the Assignment of Rights-of-Use for Frequencies of 700MHz, 900 MHz, 1.800 MHz, 2,1 GHz, 2,6 GHz e 3,6 GHz;
- (ix) Deadlines concerning the performance of procedural acts exclusively by electronic means, in the scope of the assignments of the Portuguese National Institute of Industrial Property;
- (x) Deadlines and the performance of all procedural acts related with the election of the Portuguese President, which occurred on January 24th of 2021.

Once more, in addition to the above-referred procedural acts, Law no. 4-B/2021, of February 1st, stipulates that all processes, acts and proceedings, considered urgent by law or decision issued by the judicial authority, continue to be performed without any suspension or interruption of the deadlines, acts or proceedings. In these cases, the referred Law establishes that in proceedings which require physical presence of the parties, its attorneys or other procedural players, the performance of those acts and proceedings shall be carried-out by proper means of distance communication, such as teleconference, video call, or any other equivalent, providing that the performance of acts and proceedings in such terms does not cause a serious damage to the needs of justice.

However, according to Law no. 4-B/2021, of February 1st, in the cases in which it is not possible to carry out procedural acts that require the presence of all procedural players through proper means of distance communication, those acts may be performed in person, in a place which does not imply the presence of a number of persons superior to that foreseen by the recommendations of health authorities, and pursuant to the guidelines established by the competent judiciary superior councils.

On its turn, in what regards to the specific cases of procedural acts which require the hearing of the criminal defendant and of the criminal plaintiff, as well as the hearing of witnesses or parties, Law no. 4-B/2021, of February 1st, foresees that those procedural acts shall be carried-out in a court or any other public facilities, providing that the referred procedural acts do not imply a number of persons superior to that foreseen by the guidelines of health authorities.

Finally, Law no. 4-B/2021, of February 1st, also adds article 5-A to Law no. 1-A/2020, of March 19th, which established that tenant meetings must comply with the rules applicable to corporate events, according to the moment of those events and the respective area. Furthermore, pursuant to Law no. 4-B/2021, of February 1st, the performance of tenant meetings through means of distance communication shall be encourage for the year of 2021.

As a result of this new legal regime, Law no. 4-B/2021, of February 1st, revokes articles 6-A and 7-A of Law no. 1-A/2020, of March 19th.

This Law has entered into force on February 2nd of 2021, notwithstanding the fact that the referred legal document establishes that the rules foreseen in articles 6-B and 6-D, which were added to Law no. 1-A/2020, of March 19th, entered into force on January 22nd of 2021. However, all judicial acts and proceedings meanwhile performed shall maintain the respective effects.

To access to the complete text of Law no. 4-B/2021, of February 1st, please click on the following link: <https://dre.pt/home/-/dre/156125156/details/maximized>.

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