

Legal Update

Temporary Measures to Deter the Spread of COVID-19 in Brazil

I. Brazilian declaration of public health emergency. The World Health Organization declared COVID-19 a Public Health Emergency of International Importance on January 30, 2020. The Brazilian government, in Act No. 188/GM/ MS, declared the outbreak a Public Health Emergency of National Importance on February 4 and, in Federal Law No. 13,979/2020, established measures to deal with the emergency. On March 12, the Brazilian government published Act No. 356/2020, which provides for the regulation and implementation of measures to deal with the COVID-19 coronavirus as a public health emergency.

On March 22, Brazilian President, Jair Bolsonaro, enacted a Provisional Measure ("MP No. 927/2020") which establishes a series of labor-related alternatives and measures to be taken during the state of emergency caused by the spread of Covid-19. These include allowing employers and employees to execute a written agreement to ensure the maintenance of employment relationships, which shall overrule any other law or collective bargaining agreement, provided that the Brazilian Federal Constitution provisions are respected.

II. COVID-19 statistics. On February 26, the first COVID-19 case was confirmed in the city of São Paulo. Since then, the disease has propagated quickly. On March

20, there were already 977 confirmed cases in Brazil and 11 confirmed deaths. Bearing in mind this crisis scenario, the Brazilian Congress decreed that the situation in Brazil had reached a "Public Calamity State."

III. Temporary measures to deter the spread of COVID-19. After that, the president enacted Decree No. 10,282/2020 ("Decree") and Provisional Measure No. 926/2020 ("Provisional Measure") establishing measures such as quarantines and social distancing to fight the spread of the coronavirus in Brazil.

IV. Essential activities. The Decree establishes that "essential activities" are the ones crucial to meeting Brazilian society's most urgent needs during this pandemic. Because non-performance of the activities referenced may endanger the population's health and safety, these essential activities may continue subject to appropriate health and safety considerations. For example, the transportation of essential goods to the supply (production) chain—goods necessary for performing essential activities—is considered indispensable.

Additionally, the Provisional Measure establishes that any transportation or transit restriction must be based on a technical

recommendation issued by the Brazilian's National Agency on Sanitary Surveillance (in Portuguese, *Agência Nacional de Vigilância Sanitária* – "Anvisa") to be deemed lawful.

V. State and municipality restrictions.

Each state and municipality, even before the enacting of the Federal Decree, adopted restrictive measures to contain the spread of the pandemic. We highlight some of the restrictive measures established by Brazil's state/municipal governments below:

- **São Paulo (State):** In the state of São Paulo, on March 23, 2020, Governor João Dória enacted a decree establishing a 15-day mandatory quarantine starting on March 24 and requiring the closure of all establishments that provide non-essential services until April 7. These include (i) commercial establishments and service providers offering public attendance, especially nightclubs, shopping centers and similar establishments, gyms and fitness centers; and (ii) bars, restaurants, bakeries and supermarkets, except for delivery services and "drive thru" services. Although these establishments may be open to staff, for internal operations, they must be closed to the public.

The governor considers essential services to be only the ones related to food (supermarkets, grocery stores, and delivery or "drive thru" services from bars, restaurants and bakeries), healthcare (hospitals, clinics, pharmacies, laundries and cleaning services), essential good supply (transport companies, storage facilities, gas stations, automotive vehicle workshops and newsstands) and security (i.e., private security services), in addition to services considered as essentials by the federal government by the aforementioned Decree No. 10,282/2020. The governor based the decree on the fact that São Paulo already has 631 confirmed cases of infection by the Covid-19 and 22 deaths caused by the virus.

- **Rio de Janeiro (State):** Governor Wilson Witzel established a series of restrictive measures, such as the prohibition of sporting events, concerts, fairs, scientific events, rallies, protests and the like and the opening of cinemas, theaters, and nightclubs to the public and also significantly restrictions affecting mobility, including prohibition of:

- Intercity passenger transport that connects the Rio de Janeiro Metropolitan Region to the capital itself, except by train or ferry;
- The use of rideshare services (i.e., Uber) between the capital and other municipalities;
- Interstate passenger transport originating from the states of São Paulo, Minas Gerais, Espírito Santo or Bahia, in addition to the Federal District and other states in which the outbreak of the virus has been confirmed or an emergency situation has been decreed, as ratified by the National Land Transport Agency;
- International or national passenger flights originating from states in which the outbreak of the virus has been confirmed or an emergency situation has been decreed, as ratified by the National Civil Aviation Agency (This measure does not apply to cargo operations);
- The berthing of cruise ships originating from states and countries with a confirmed outbreak of the coronavirus or with an emergency situation decreed, as ratified by the National Waterway Transport Agency (in Portuguese, *Agência Nacional de Transportes Aquaviários* – ANTAQ).

Besides the restrictions above, the following is prohibited for the next 15 days in Rio de Janeiro:

- Operation of gyms, fitness centers and similar establishments;

- Operation of malls, shopping centers and other retail venues, with the exception of supermarkets, pharmacies and health service providers such as hospitals, clinics, laboratories and similar establishments;
 - Going to a beach, lagoon, river or public swimming pool;
 - Operation of bars, restaurants, cafeterias and similar establishments (exceptions: these types of establishments inside hotels, inns and similar institutions that are under quarantine, operating only for guests and employees as a way of ensuring quarantine.
- Services and masses of any creed or religion;
 - Commercial establishments of any kind, including bars, restaurants, convenience stores and other stores, except for medical clinics, laboratories, drugstores, supermarkets and building materials and home products stores (retailers and wholesalers), minimarkets, grocery stores and the like, bakeries (exclusively for product selling, not eating in), butcher shops, fish markets, gas stations, and delivery operations;
 - Beauty salons.
- **Brasília (Federal District):** Governor Ibaneis Rocha enacted Decree No. 40,539 on March 19, establishing measures to deal with the healthcare emergency arising from COVID-19. Pursuant to art. 2, the following activities shall remain suspended until April 5:
 - Gatherings of any nature that require a permit from governmental authorities;
 - Collective activities regarding cinema and theater;
 - Educational activities in every school, college and university, whether public or private;
 - Gyms and fitness centers of any nature;
 - Museums;
 - Zoos and parks;
 - Nightclubs;
 - Service to the public in malls, fairs and recreational clubs, except related to laboratories, healthcare clinics, drugstores and delivery operations;
 - Service to the public in all bank agencies and credit unions in the Federal District, except for assistance related to banking programs designed to alleviate the economic consequences of COVID-19, as well as financial assistance to people with serious illnesses;
- In addition to the measures referred to above, several other states and cities in Brazil (Santa Catarina, Bahia, Espírito Santo, Minas Gerais and others) also have established restrictive measures in order to fight against the global spread of the virus:
- State of Acre: Decree No. 5,496 of March 20;
 - State of Amazonas: Decree No. 42,099, of March 21;
 - State of Amapá: Decree No. 1,414, of March 20;
 - State of Pará: Decree No. 609, of March 16;
 - State of Rondônia: Decree No. 24,887, of March 20;
 - State of Tocantins: Decree No. 6,072, of March 21;
 - State of Alagoas: Decree No. 69,541, of March 19;
 - State of Bahia: Decree No. 19,529, of March 16;
 - State of Ceará: Decree No. 33,510, of March 16;
 - State of Maranhão: Decree No. 35,677, of March 21;
 - State of Paraíba: Decree No. 40,134, of March 20;

- State of Pernambuco: Decree No. 48,834, of March 20;
- State of Piauí: Decree No. 18,901, of March 19;
- State of Rio Grande do Norte: Decree No. 29,541, of March 20;
- State of Sergipe: Decree No. 40,560, of March 16;
- State of Goiás: Decrees No. 9,633, of March 13, No. 9,637, of March 17 and No. 9,638, of March 20;
- State of Mato Grosso do Sul: Decree No. 15,391, of March 16;
- State of Mato Grosso: Decree No. 419, of March 20;
- State of Espírito Santo: Decrees No. 4,593-R, of March 13; No. 4,599-R, of March 17; No. 4,600-R, of March 18; No. 4,601-R, of March 18; and No. 4,604-R, of March 19;
- State of Minas Gerais: Decree NE No. 113, of March 12; Deliberation No. 8, of March 19, of the Extraordinary Committee COVID-19; and Decree No. 47,891, of March 20;
- State of Rio de Janeiro: Decrees No. 46,973, of March 16 and No. 46,980, of March 19.
- State of São Paulo: Decrees No. 64,862, of March 13 and No. 64,879, of March 20;
- State of Paraná: Decrees No. 4,230, of March 16 and No. 4,298, of March 19;
- State of Rio Grande do Sul: Decrees No. 55.128, of March 19, and No. 55,130, of March 20;
- State of Santa Catarina: Decrees No. 509 and 515, of March 17.

VI. Additional Federal measures. In order to minimize the impact of the COVID-19 pandemic on public health and the economy, the federal government has announced several restrictive measures, including:

- **Actions for vulnerable people:**
 - Anticipation of the first installment of the Christmas Bonus of retirees and pensioners for April (R\$23 billion);
 - Anticipation of the second installment of the Christmas Bonus of retirees and pensioners for May (R\$23 billion);
 - Amounts not withdrawn from the Social Integration Program (known in Brazil as “PIS / PASEP”) will be transferred to FGTS to allow new withdrawals (up to R\$21.5 billion);
 - Anticipation of Unemployment Benefits for June (R\$12.8 billion);
 - Expanding the Bolsa Família program (responsible for the transfer of resources to low-income families in Brazil) to increase its beneficiaries by more than 1 million people (up to R\$3.1 billion);
 - Reduction of the payroll interest ceiling, an increase in the margin and a change in the payment period;
 - R\$150 billion to stimulate the economy;
 - Money vouchers for the most needy (income supplementation).
- **Maintenance of employment:**
 - Deferral of the FGTS payment term for 3 months (R\$30 billion);
 - Deferral of collection of federal tax by the Simples Nacional for 3 months (R\$22.2 billion) and delay in the payment of the Service Guarantee Fund (FGTS) and Simples Nacional for three 3 months, to reinforce the companies' cash;
 - More R\$5 billion in PROGER / FAT credit for micro and small companies;
 - 50% reduction in contributions to Sistema S for 3 months (R\$2.2 billion);
 - Simplification of the requirements for contracting credit and dispensing with documentation (CND) for credit renegotiation;

- Facilitation of the clearance of imported industrial raw materials and inputs before landing;
- Release of R\$24 billion for personal credit lines (in order to help self-employed workers) and R\$48 billion for companies;
- Aid to civil aviation;
- Cutting SELIC to 3.5%;
- Interest reduction and authorization to pause debt payments by Caixa Econômica Federal.
- **Fighting the pandemic:**
 - Moving the DPVAT fund balance to SUS (R\$4.5 billion);
 - Reduction of import tax rates for products for medical and hospital use to zero (until the end of the year);
 - Temporary exemption from IPI for listed imported goods that are necessary to combat COVID-19;
 - Temporary exemption from IPI for domestically produced listed goods that are necessary to combat COVID-19;
 - Suspension of the proof of life requirement for the INSS beneficiaries for 120 days;
 - Tariff preference for products for medical and hospital use;
 - Prioritization of customs clearance of products for medical and hospital use;
 - Temporary exemption of medical products from taxation;
 - Closing borders.

Several other measures are being discussed by public authorities, and many will have an impact on economic and labor relations. Among these measures are: (i) express permission by law for a company to change its working hours; (ii) reactivation of the unemployment insurance program; (iii) permission to compensate for unworked days during a vacation period; (iv) non-

application of labor inspection fines; (v) suspension, during the crisis, of administrative record requirements; (vi) extension of the term for carrying out workplace inspections; and (vii) exclusion of the coronavirus as a work-related disease. These and other measures are pending negotiation, analysis and approval of a law or provisional measure on each.

VII. National Bank for Economic and Social Development measures.

Finally, last Sunday, March 22, the president of the National Bank for Economic and Social Development (in Portuguese, *Banco Nacional de Desenvolvimento Econômico e Social – BNDES*), Gustavo Montezano, announced 4 financial support measures to inject funds into the economy, which will have an initial duration of 6 months:

- Transfer of R\$20 billion from the PIS-PASEP Fund to the Brazilian Social Security Fund (FGTS), intended to assist workers;
- Temporary suspension of payment of interest and principal installments (a standstill) for direct financing granted by BNDES to companies, in the amount of R\$19 billion, in addition to the capitalization of the outstanding balance;
- Temporary suspension of payment of interest and principal installments (a standstill) of direct indirect financing granted by financial agents with funds from BNDES (lending operations), in the amount of R\$11 billion, in addition to the capitalization of the outstanding balance; and
- Availability of resources for new working capital financing operations for micro, small and medium-sized companies (MSMEs), in the amount of R\$5 billion, which will be contracted through lending operations.

The transfer of resources to the FGTS and the new lines to MSMEs aim to provide direct support to Brazilian workers and companies that represent a relevant portion of jobs in the country.

Non-performing companies will be eligible for the standstill for direct and indirect financing already contracted and this will not change the final term of the operation. The installments of interest and principal that would be due during the 6-month period the suspension will be automatically incorporated into the outstanding balance and diluted in the other installments of the financing.

When announcing these measures, Mr. Montezano reinforced that the BNDES is an important instrument for implementing federal government policies and that it will work together with other bodies to minimize the effects of the pandemic. He also highlighted that the 4 measures announced will be complementary to other actions already announced or to be developed to support specific sectors of the economy, especially those most affected by traffic restrictions, such as airlines (Provisional Measure No. 925/2020), bars and restaurants and the hotel sector.

For more information about the topics raised in this Legal Update, please contact any of the following lawyers.

Victor Galante

+ 55 21 2127 4275

vgalante@mayerbrown.com

Mario Saadi

+ 55 11 2504 4288

msaadi@mayerbrown.com

Aline M. Fidelis

+ 55 11 2504 4666

afidelis@mayerbrown.com

Please visit www.tauilchequer.com.br for comprehensive contact information for all Mayer Brown offices.

Any tax advice expressed above by Mayer Brown LLP was not intended or written to be used, and cannot be used, by any taxpayer to avoid U.S. federal tax penalties. If such advice was written or used to support the promotion or marketing of the matter addressed above, then each offeree should seek advice from an independent tax advisor.

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the "Mayer Brown Practices") and non-legal service providers, which provide consultancy services (the "Mayer Brown Consultancies"). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website.

"Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown.

© Copyright 2020 Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. All rights reserved.