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The Emergency and Transitory Legal Framework for Private Law Legal Relations (RJET) During the COVID-19 Pandemic

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Abstract: The RJET bill, which considered the consequences of the COVID-19 pandemic and suggested emergency and transitory private law and company rules to be implemented, detailed below, is approved after amendment and veto.

On June 12, 2020, Law n. 14.010/2020 was published, enacting into law the RJET bill relative to emergency and transitory private law and company rules to be implemented during the COVID-19 pandemic (the RJET Law).

The RJET Law addresses a number of different themes, amongst them Property Law, Family Law and, principally, Corporate Law.

Of its provisions, we highlight: (i) the suspension of statute of limitations and decadence time periods; (ii) the suspension of rules specific to the unjust competition regime; and (iii) the permission to conduct general assembly meetings virtually.

With regard to the suspension of statute of limitations and decadence time periods, the RJET Law establishes their suspension and impediment from June 12, 2020 to October 30, 2020. Thus, for example, the statute of limitations relative to civil remedy, the time period for payment of a title of credit and other time periods are suspended.

With regard to unjust competition, certain provisions of the Law n. 12.529 (the “Antitrust Law”) are rendered inapplicable for the suspended time period:

- Acts of concentration between 02 (two) or more companies that establish associative contract, consortium or joint venture agreement between themselves need not be submitted to the Administrative Council for Economic Defense (CADE) for approval, so as to facilitate their cooperation;
- There is no infraction of the economic order in the case of (a) sale of goods or rendering of services unjustifiably below cost; and (b) partial or total assignment of company operations without proven just cause, so long as such proof is the result of the state of public calamity within the above stated suspension time period, or for the duration of the state of public calamity.

Also, a provision to the Law allows for conducting general assembly meetings virtually, including those that have the purpose of removing administrators or amending the company's articles of association, independent of whether the constitutive acts of the company state otherwise.

This provision is consonant with Provisional Measure n. 931 of March 30, 2020, presently pending enactment into law, which amended the Civil Code, permitting shareholders to participate and vote remotely.

Important to note is that the text to Law RJET was vetoed several times, the chapter treating contracts being vetoed in its entirety. Among the provisions that were vetoed are:

- (i) Non-retroactivity of the effects of the pandemic on contracts, including force majeure and unforeseeable circumstance;
- (ii) Descharacterization of macroeconomic adjustment, such as inflation, exchange variation, the devaluing or substitution of the monetary standard, as unforeseeable facts possibly resulting in contractual revision or rescission.

These vetoes were the result of the following Executive Power pronouncement: "The Legislative Power has acted contrary to the public interest in that Brazilian law already contains appropriate mechanisms for the modulation of contractual obligations in exceptional situations, such as force majeure, unforeseeable circumstance as well as the theories of unforeseeability and excessive burden."

It should be noted, however, that said vetoes have yet to be decided upon by the National Congress and can be rejected, in which case the original text of the RJET Law will have full force and effect.

It is our perspective that the vetoes should remain in place as, even though the provisions have as their purpose greater juridical assurance, they are generic and lack express mention of the need for case by case analysis to determine their application in the particular instance and, as pointed out in the Executive Power pronouncement, the material is already duly foreseen in Brazilian Law.

Almeida Advogados has among its ranks teams specialized in Corporate and Company Law, updated daily as to the measures as are announced and available to answer any questions on the content of this article.

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