



INFOGRAPHIC

COVID-19 Pandemic Relevant Issues

While we join together to address COVID-19 related challenges, please be assured that Gusmão & Labrunie is continuing to work to help you and your company navigate these uncharted waters on a business as usual way.

BRAZILIAN PATENT AND TRADEMARK OFFICE

Technical staff at BPTO have been working remotely since March 20th to ensure services continuity.

SERVICES CURRENTLY WORKING Electronic Systems Working

Filing of trademark, patent and industrial design applications, online filings (oppositions, appeals and administrative nullity proceedings), transfer of ownership, payment of annual fees and/or final fees, among others.

SERVICES TEMPORARILY INTERRUPTED In-person Meetings

However, it is possible to contact the BPTO through its contact channel <http://faleconosco.inpi.gov.br/faleconosco/>

Deadlines falling
between March
16th and April 14th
are suspended

Ordinance INPI PR n. 120

Remaining days in
open deadlines will
run again from
April 15th

New deadlines will
start running from
April 15th

TRADEMARKS

Our team continues to be responsive and supportive in trademark prosecution matters:



Filing of trademarks applications



Administrative proceedings (filing of oppositions, nullity proceedings and appeals)



Renewal of trademark registrations

This might be an important time for companies to carefully plan a successful launch of a new brand.

Regardless of economic impacts of the coronavirus and business decisions to suspend the launch of new brands, we are confident that companies shall resume activities effectively. Hence, our team is available to provide guidance on risks and how to overcome obstacles related to trademarks that shall certainly help achieving profitable results.



PATENTS

BPTO plan to fight its backlog will not be interrupted. The goal remains to decrease the backlog in 80% until 2021.

The Ministry of Health may request priority prosecution for patent applications related to pharmaceutical processes and products, health related equipments and/or materials considered strategic to the National Health Service (SUS) – Resolution INPI PR n. 239, article 13

BRAZILIAN JUDICIARY

- Court deadlines and in-person hearings and court sessions are suspended until April 30th, as per Resolution n. 313 of March 19th, 2020 of the National Council of Justice (CNJ).
- Remaining period for deadlines now suspended started before March 19th, 2020 will run again from April 30th. New deadlines will start running from April 30th.

- Several Courts stayed all judicial deadlines even before CNJ Resolution. At the State Court of São Paulo and Federal District Courts for the 2nd Circuit deadlines are suspended since March 16th. At the State Court of Rio de Janeiro deadlines are suspended since March 17th (Ordinance CSM n. 2545/2020, Resolution n. TRF2-RSP-2020/00010 and Joint Ordinance TJ/CGJ n. 05/20).
- The mentioned suspension does not apply to material deadlines, such as statute of limitations terms for filing of a lawsuit.



CURRENTLY WORKING

Electronic court sessions and judgements



TEMPORARILY INTERRUPTED

In-person hearings and judgements

It is possible that the Courts suggest conversion of in-person trials to electronic trials subject to agreement by the Parties involved.

CONTRACTS

SIGNED CONTRACTS:

In addition to the absence of fault from the parties, COVID-19 pandemic – so as to justify eventual contractual breaches – has to characterize the causal relation of such breach. Possibilities of failure to comply with payment obligation are:



Possibility 1:

A large portion of the commercial agreements expressly excludes payment obligations as tolerated in light of force majeure events. It is important to verify the parties' understanding on the matter set forth in the agreement. If the agreement establishes such an exception, then, initially, the debtor would not be able to argue the postponement of the payment obligation as a consequence of the COVID-19 pandemic as a force majeure event.



Possibility 2:

The consequences of COVID-19 pandemic may result in disproportionality between the obligations undertaken by the parties – if such result occurs, the injured party can request the renegotiation of the contract due to excessive burden caused by external factors outside the parties' control.

CONTRACTS BEING NEGOTIATED:

Depending on the nature of the agreement, the parties can already predict and accord some guarantees and safeguards so to ensure the performance of the contractual object. **Examples:**

Flexible schedules, both in relation to the deliverables and to the payments



If applicable, to negotiate the payment schedule and obligations for a posterior date

Termination or expiration of the contract for impossibility of the performance of the contractual object – in this case, the situation of the parties before execution of the agreement shall be maintained



SPONSORSHIP/COMMERCIALPROMOTIONS/EVENTS-RELATEDAGREEMENTS:

There is a myriad of agreements based upon a certain event which – in the current scenario – may be suspended, postponed or cancelled. Thus, it is of extreme importance to **link the existence of the agreement to such event.**

- **Should the event be suspended or postponed:** the contract should also be suspended and the term, postponed, until the occurrence of the event.
- **Should the event be cancelled or the new date not be adequate for one of the parties:** : the contract should be terminated, and, once again, it should be maintained the situation of the parties before the execution of the agreement.

•••• PROCESSING OF PERSONAL DATA ••••

The Brazilian General Data Protection Law – LGPD is not yet in effect but several principles and rules it sets forth might be find in sectorial laws which shall be taken into account as well as the recently enacted Law n. 13.979/2020. Therefore, the following are suggested precautions concerning processing of personal data amid the spread of COVID-19:



1. Avoid compulsory, systematic, indiscriminate and in large scale collection of health data to verify possible infection with coronavirus such as daily and mandatory temperature checks and filling of medical questionnaires. Awareness on the importance to voluntarily disclose information shall be the best approach.



2. Communication to staff and/or authorities should not identify people infected without a clear justification. Provide individuals with information about the processing of their personal data as well as document any decision making process regarding measures adopted to manage COVID-19, which involves processing of personal data, is key.



3. Do not collect health data beyond what is strictly necessary to manage a possible infection with coronavirus or exposure to the virus, ensuring security and confidentiality of the data as well as implementation of specific retention periods.



4. Health data collected for the purpose of preventing and/or avoid the spread of the disease **shall not be used for a different purpose.**



5. Keep staff and partners informed on guidelines concerning security and confidentiality of information.



6. Follow and improve policies around information security: consider the same kinds of security measures adopted in normal circumstances, and also multi-factor authentication and encryption to restrict access.



7. Provide individuals with information regarding processing of their personal data, including purpose of processing and retention period, in a clear and plain language.



8. Review contract with partner directly involved in providing solutions enabling the employees to work remotely: clearly determine data that might be collected and purpose; describe obligations of the parties; establish adequate security controls, and criteria for data retention and destruction.



9. Avoid invasive and constant monitoring of activities, especially for employees working remotely.



10. Implement innovative solutions to meet challenges due to COVID-19 pandemic in a proportionate and transparent way, prioritizing anonymization whenever possible.

Reach out to our team for any clarification!



GUSMÃO & LABRUNIE

INTELLECTUAL PROPERTY