

## Legal Alert: Law that modifies Law No. 19,983 that regulates the transfer and grants executive merit to the copy of the invoice

April 7, 2020 / By [Macarena Iturra](#), [Ricardo López](#), [Manola Quiroz](#), [Luis Parada](#), [Felipe Riedel](#), [Ignacio Schwerter](#), [Claudio Sepúlveda](#) and [Andrea de la Vega](#).

In this legal alert prepared in the framework of the Coronavirus in Chile, you can find information about (I) law N°21,217 that modifies law N°19,983 that regulates the transfer and grants executive merit to the copy of the invoice; (II) the law that establishes an exceptional legal regime for judicial proceedings and about (III) the crime of fraudulent obtaining of benefits from the unemployment insurance and criminal liability of the legal entity.

### I. Law No. 21,217 that modifies Law No. 19,983 that regulates the transfer and grants executive merit to the copy of the invoice

On April 3, Law No. 21,217 was published in the Official Gazette, amending Law No. 19,983, which regulates the transfer and grants executive merit to a copy of the invoice, in order to limit exceptional payment term agreements in cases of smaller companies issuing invoices (hereinafter the "Law").

In summary, the Law -which amends Article 2 of Law 19,983 and which will enter into force 60 days from its publication, except for the public nature of the registry of agreements maintained by the Ministry of Economy indicated below, which will enter into force from its publication- prevents the possibility of the parties from agreeing to exceed the maximum term of 30 days for the payment of invoices in the event that a smaller company (defined in Law No. 20,416) participates as a seller or service provider and, as buyer or beneficiary of the good or service, a company that exceeds the highest value of the annual income indicated in Law No. 20,416, unless the longer term is for the benefit of the smaller creditor company, and in those cases that contemplate tests, advance payments, partial payments or advance payments.

In addition, this Law grants the character of public to certain information of the registry maintained by the Ministry of Economy, and in which the agreements that extend by common agreement the term for the payment of the invoices must be registered.

On the other hand, the Law establishes as a new clause that does not produce effect, whatever the term stipulated by the parties, those that have the purpose of delaying the term of payment of the invoice, establishing partial payments, except for the cases mentioned above (that the longer term be in benefit of the smaller creditor company, and in those cases that contemplate tests, advance payments, partial payments or payments in advance).

Finally, the Law states that the stipulations regarding the payment term contained in the agreements concluded between smaller companies, such as sellers or lenders, and the companies that exceed the highest value of the annual income indicated in Law No. 20. 416, as purchasers or beneficiaries of the good or service, registered prior to the entry into force of the law in the registry of agreements maintained by the Ministry of Economy, and that are not in the exceptional cases of the Law mentioned above (that the greater term is in benefit of the smaller creditor company, and in those cases that contemplate tests, advance payments, partial or advance payments), will be considered as not written and the term of payment of 30 days will govern. In any case, for agreements registered prior to the effective entry into force of the law in the registry of the Ministry of Economy, which comply with the requirements established in the mentioned letter a), in order to maintain their registration they must update it within 90 days from the publication of the Law.

### II. Law that establishes an exceptional legal regime for judicial proceedings

On April 2, 2020, Law No. 21,226 was published in the Official Gazette which: "*Establishes the Legal System of Exception for Legal Proceedings, in Hearings and Judicial Actions, and for the Deadlines and Exercises of the Actions It Indicates, due to the Impact of Covid-19 Disease in Chile*", which entered into force on the aforementioned date.

Thus, as of said date and until the end of the State of Catastrophe or its extension - in case the Authority decides to do so - a special regime will be applied to the judicial proceedings of the Ordinary, Special and Arbitration Courts, whose most relevant elements are related to: suspension of hearings, possibility of holding remote hearings, new cause to allege a legal impediment, suspension of evidentiary periods and, interruption of the statute of limitation of civil actions, among others.

**Suspension of hearings.** The Supreme Court has the authority to suspend hearings of the ordinary and special courts that belong to the Judicial Branch if, in the context of the restrictions imposed by the Authority due to the health crisis, the conduct of the hearings affects the guarantees of due process, such as the bilateral nature of the hearing, adversarialism, and appreciation of evidence, among others. The duration of the suspension may not exceed the duration of the State of Disaster. Special Tribunals that do not belong to the Judicial Branch and ad hoc Arbitrators may suspend hearings that have already been set, unless they require urgent intervention.

**Possibility of remote hearings.** The courts have the power to make this determination, as long as the guarantees of due process are safeguarded for all participants. The parties may also request this.

**New legal cause to allege an impediment.** A new legal cause to allege an impediment is established, by virtue of which, the participants in a judicial process who have not been able to comply within a period of time with some diligence, such as the filing of actions, may allege the restrictions provoked by the health crisis, within 10 days following the cessation of the impediment.

**Suspension of probation periods.** On this point, the Law suffered a difference from the Bill originally filed, since it initially contemplated the generic suspension of any judicial term in progress. The Law finally established that only the evidentiary terms that at the date of entry into force of this Law had begun to run, or that began during the state of constitutional emergency of catastrophe and up to 10 working days after its end, or at the time it is extended if it is the case, are suspended. This applies to ordinary, special and arbitration courts, excluding criminal courts.

**Interruption of the statute of limitation of the civil action.** With the sole presentation of the claim, under the condition that it is not declared inadmissible and is notified within 50 working days after the end of the Disaster or its extension. If the claim has been filed after the end of the State of Disaster, it must be notified within 30 working days. This does not apply to criminal proceedings. Finally, special rules are established for labour actions and those under the jurisdiction of the Local Police Courts.

### **III. Crime of Fraudulent Obtaining of Benefits from Unemployment Insurance and Criminal Liability of the Legal Entity**

On April 6, 2020, Law No. 21,227 was published in the Official Gazette, which allows access to the unemployment insurance benefits of Law No. 19,728 under exceptional circumstances, when as a result of an act or declaration of authority establishing health or internal security measures for the control of COVID-19, there is a cessation of activities in all or part of the country and which prevents or prohibits totally or partially the provision of contracted services.

According to the law, in order to make effective the access to the unemployment insurance funds, the affected employer must request the benefit before the Administrator of the Severance Fund, presenting a sworn statement that the worker or workers for whom the benefit is requested are not in any of the situations described in the law (affected by a work continuity agreement and/or receiving some subsidy for work incapacity), being personally responsible for the veracity of the information given.

The legislator, in anticipation of fraudulent access of the unemployment insurance funds, decided to penalize those who obtain supplements and/or benefits through simulation or deception, and those who similarly obtain a greater benefit than would have been the case, with the penalty of medium to maximum imprisonment. The legislator provided that the same penalty shall be applicable to those who provide the means for the commission of these crimes. This is without prejudice to the obligation to return any sums unduly received, adjusted in accordance with the law.

Secondly, it also decided to criminally punish the legal person benefiting from the above-mentioned offence. Thus, when employers applying for unemployment insurance benefits are legal persons, the law provides that they shall be held liable for fraudulent obtaining of unemployment insurance funds when the same is committed directly and immediately in their interest or for their benefit, by their owners, controllers, managers, chief executives, representatives or those who carry out management and supervisory activities, provided that the commission of such offences is the result of a failure by the legal person to fulfil its management and supervisory duties, and shall be punished tax penalty corresponding to twice the amount of the benefit unduly received and a ban on entering into acts and contracts with the State for two years.

Under the same assumptions as above, the law provides that employers who are legal persons shall also be liable when such offences are committed by natural persons who are under the direct direction or supervision of any of the subjects mentioned in the previous paragraph.

However, the employer of a legal entity shall be exempt from criminal liability when the natural persons mentioned in the preceding paragraphs have committed such offences exclusively for their own benefit or for the benefit of a third party.

The creation of this new criminal type and its transitory incorporation into the regime of Law No. 20,393 during the validity of Law No. 21,227, empirically demonstrates the growing concern of the legislator in the so-called corporate criminality and the relevance of crime prevention models and their implementation within companies.

**Please be informed that on April 6 the Employment Protection Law (Law 21,227) has entry into force, which allows workers to access unemployment insurance benefits, in case of suspension of employment contracts due to the crisis of Covid-19. For more information you can access our alert on this subject by [clicking here](#).**

<b>Contacts</b>
For more information, please contact:

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