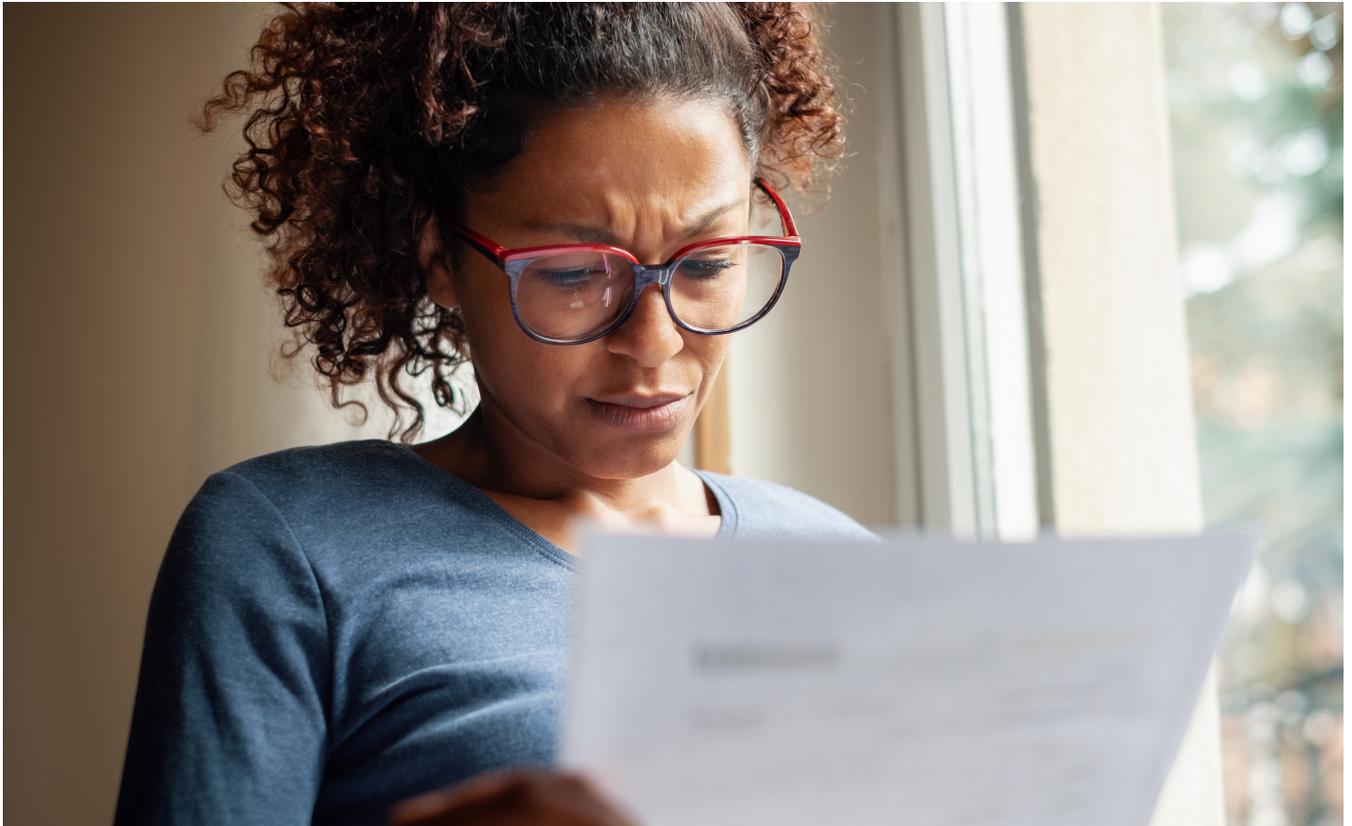


# COMMERCIAL AND CIVIL STATUTES OF LIMITATIONS IN PANAMA AND THE COVID-19 CRISIS

BY PUBLIO CORTÉS



IN LAW, THE CONCEPT “STATUE OF LIMITATION” HAS A GENERIC DEFINITION THAT BASICALLY REFERS TO THE NECESSITY FOR CERTAIN FACTS WITH JURIDICAL RELEVANCE, TO OCCUR WITHIN A DETERMINED TIME LIMIT AFTER WHICH ITS ABILITY TO HAVE LEGAL EFFECT IS OVER. THE IDEA IS TO PREVENT SOME CASES TO BE LEFT AS OPEN SUBJECTS AND PENDING FOREVER.



THAT IDEA, WHICH IS SOMETHING EASY TO SAY, HAS MULTIPLE IMPLICATIONS AND COULD GENERATE DIFFERENT APPLICATIONS WITHIN DIVERSE BRANCHES OF LAW, FOR INSTANCE:

- IF A MAN IS FIRMLY SENTENCED TO 4 YEARS IN PRISON, THE AUTHORITY HAS 4 YEARS TO LOCATE AND PLACE HIM IN PRISON. THAT TIME LIMIT CAN BE EXTENDED UP TO A YEAR FURTHER IF THE COMPLIANCE JUDGE DOES SOMETHING TO INTERRUPT IT.
- IN A CIVIL LITIGATION, AFTER A CLAIM IS FILED AND IS NOTIFIED TO THE DEFENDANT, SAID DEFENDANT HAS A TIME LIMIT TO RESPOND IT, IF IT IS NOT DONE WITHIN THAT STATUTE OF LIMITATION THEN HE CANNOT DO IT. HE COULD BECOME A PARTY OF THE PROCEDURE IN ANY SUBSEQUENT STAGE BUT THAT PROCEDURE WILL NOT BACK DOWN.
- IN PUBLIC ADMINISTRATIVE PROCEDURES, IF WE APPLY THE GENERAL RULE, WHEN SOMEONE IS AFFECTED BY AN ADMINISTRATIVE RULING AND FILE A MOTION FOR A RECONSIDERATION, IF THAT PERSON WANT TO SUPPORT THE CASE IN ANY ACCESSORY FACT OCCURRED BEFORE THE PROCEDURE STARTED, HE ONLY HAS 2 DAYS AFTER THE INITIATION OF THE PROCEDURE TO FILE WHAT IS CALLED “INCIDENTE”.

AT THE END, AS WE SAID, THERE ARE SEVERAL CONSEQUENCES OF THIS ISSUE. THE COVID-19 CRISIS HAS GENERATED AN IMPORTANT DISTURBANCE IN THE DEVELOPMENT OF THIS JURIDICAL DEVICE AND ITS DIFFERENT BRANCHES, BECAUSE OF THE LEGAL SCHEME DOES NOT HAVE A



SIMPLE FORM OF MEETING EACH AND EVERY ONE OF THE CASES AND LOTS OF THESE FATAL STATUTES OF LIMITATIONS RULES ARE STILL ELAPSING, DESPITE THE CRISIS HAS PROBABLY CAUSED THE ACCOMPLISHMENT OF SOME OF THEM HAS BEEN AFFECTED.

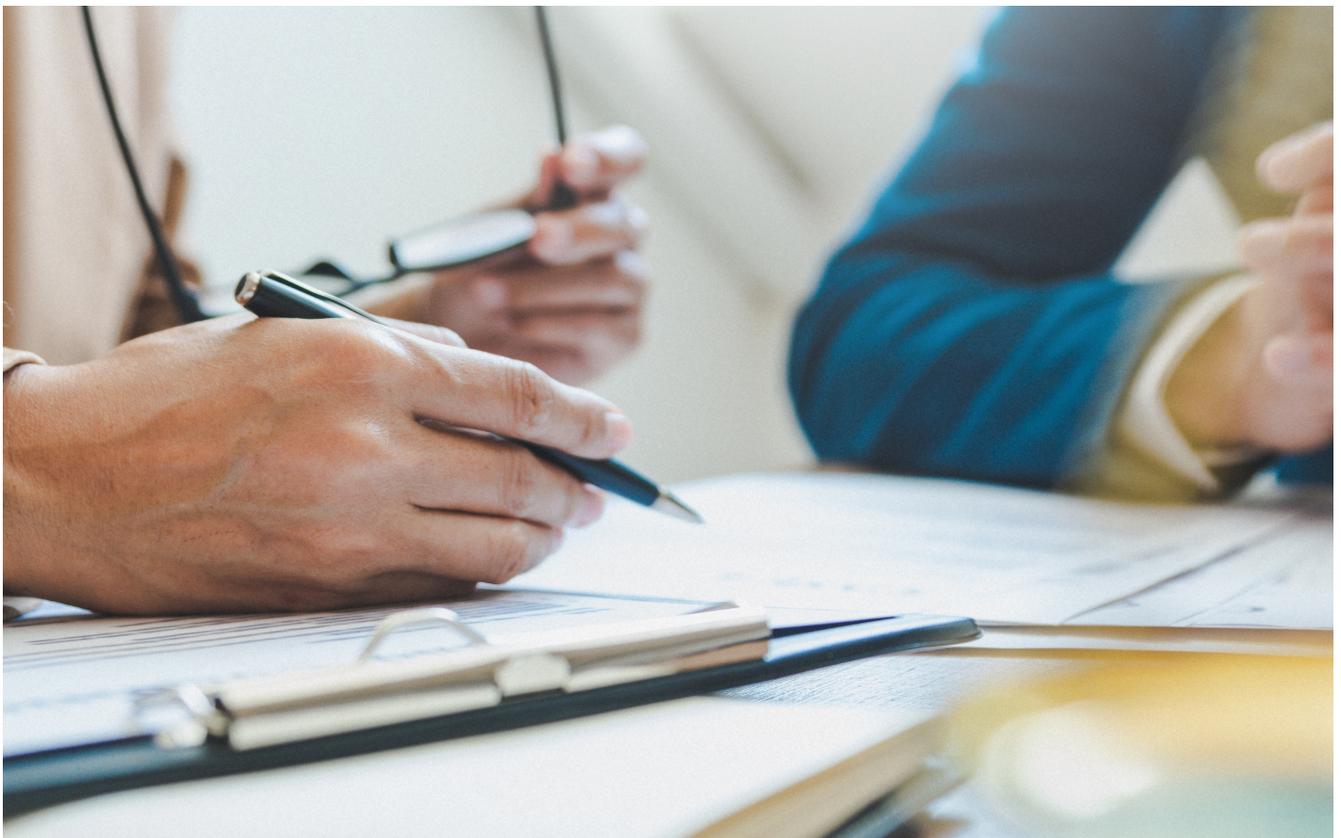
PRECISELY BECAUSE OF WHAT WE EXPLAINED ABOVE, SOME MEASURES HAVE BEEN RELEASED FOR EXAMPLE THE EXECUTIVE DECREE 693 DATED JUNE 8TH, 2020 AND OTHER RELATED DECREES THAT SUSPENDED ADMINISTRATIVE STATUTES OF LIMITATIONS IN DIFFERENT CENTRAL GOVERNMENTAL ADMINISTRATIVE INSTITUTIONS AND AUTONOMOUS AND SEMI-AUTONOMOUS ENTITIES EXCEPT FOR SOME.

IN THE SAME LINE THE SUPREME COURT OF JUSTICE, ACCORDING TO SECTION 267 OF THE JUDICIAL CODE, EMITTED SOME ADMINISTRATIVE ORDERS WHICH SUSPENDED (WITH VARIANTS) THE JUDICIAL STATUTES OF LIMITATIONS WITHIN COURTS AND TRIBUNALS IN THE COUNTRY. IN MONDAY JUNE 21ST 2020 SAID TIME LIMITS CAME BACK TO NORMALITY.

IT IS VERY IMPORTANT TO HIGHLIGHT THAT THE STATUTES OF LIMITATIONS SUSPENDED BY THE JUDICIAL BRANCH, ONLY WERE REFERRED TO THE ONES THAT ARE PROCEDURAL, ESTABLISHED BY THE RULES THAT APPLY TO THE RITE OF CASES BEFORE THE COURTS AND TRIBUNALS.

IN CIVIL AND COMMERCIAL LAW THE CONCEPT OF “STATUTE OF LIMITATION OF ACTIONS” EXIST, WHICH REFERS SPECIFICALLY TO THE TIME THAT A PERSON, INDIVIDUAL OR CORPORATION, HAS TO ENFORCE A RIGHT AGAINST ANOTHER. THIS TYPE OF STATUTE OF LIMITATION IS SUBSTANTIVE, AND IT WAS NOT SUSPENDED NEITHER BY THE EXECUTIVE BRANCH NOR THE JUDICIAL BRANCH OF THE GOVERNMENT.

THUS, FOR EXAMPLE, WE CAN READ A SECTION OF THE CIVIL CODE ESTABLISHING THE RIGHT THAT A HARMED PERSON HAS TO CLAIM AN INDEMNITY FROM THAT PERSON WHO CAUSED THE DAMAGES. BUT THAT DOES NOT NECESSARILY HAPPEN AUTOMATICALLY. IF THE NEGLIGENT PARTY DOES NOT COMPENSATE THE DAMAGE VOLUNTARILY, THE AFFECTED PARTY HAS TO SUE IN ORDER TO GET A RULING FROM A JUDGE AWARDING THE RIGHT, BUT SAID CLAIM CANNOT REMAIN PENDING FOR A LIFE-TIME AND THAT IS WHY SECTION 1706 OF THE CIVIL CODE STATES THAT, IN THESE TORT CASES, THE STATUTE OF LIMITATION UPON WHICH A PLAINTIFF CAN PLACE A CLAIM (AND NOTIFY IT TO A DEFENDANT) IS ONE (1) YEAR.





THE SAME THING HAPPENS IN THE CASE OF THE COMMERCIAL LAW, WHO HAS SEVERAL STATUTES OF LIMITATIONS OF ACTIONS, SOME OF THEM INCLUDE:

- A YEAR (1) FOR CLAIMS IN RETAILING SALES
- A YEAR (1) FOR CLAIMS WITHIN INSURANCE CONTRACTS
- THREE YEARS (3) FOR CLAIMS AMONG PARTNERS IN CORPORATIONS.
- THREE YEARS (3) FOR CLAIMS IN ANY BANKING OR FINANCING CONTRACT
- THREE YEARS (3) FOR CLAIMS RELATED TO NEGOTIABLE DOCUMENTS

ALL THESE STATUTES OF LIMITATIONS FOR CIVIL AND COMMERCIAL ACTIONS ARE ESTABLISHED BY ACTS ENACTED BY THE NATIONAL ASSEMBLY AND NONE OF THEM HAVE CHANGED OR HAVE BEEN TEMPORARILY SUSPENDED DUE TO COVID-19 CRISIS. WHICH IS WHY THEY MUST BE ACCOMPLISHED UNLESS SOME HAS BEEN AFFECTED BY THE TRANSITORY CLOSING OF COURTS, A CASE IN WHICH, PROROGUES WILL BE PUT INTO PLACE UNTIL THE COURTS OPENED.

ACCORDING TO WHAT WE EXPLAINED CAN ARISE SITUATIONS LIKE THE FOLLOWINGS:

- ANY DEBTOR OF A BANKING OBLIGATION THAT IS 2 YEARS AND 7 MONTHS IN DEFAULT BY MARCH 2020. IF DURING THE COVID-19 CRISIS THE 3 YEARS ARE FULFILLED AND BEFORE THAT DATE THE BANK DID NOT FILE AND NOTIFY THE SUIT, THE DEBT IS EXTINGUISHED AS LONG AS THE

DEFENDANT OPPORTUNELY ARGUES THE STATUTE OF LIMITATION DURING THE PROCESS, UNLESS THE COURTS IS CLOSED AS IT WAS EXPLAINED BEFORE.

- SAME THING WOULD OCCURS WITH AN INSURANCE CLAIM WHERE THE INSURANCE COMPANY DECLINED THE CLAIM IN JULY 2019. THE POLICYHOLDER HAS UNTIL JULY 2020 TO FILE AND NOTIFY THE SUIT AGAINST THE INSURANCE COMPANY. IF HE DOES NOT DO IT, THEIR RIGHT EXTINGUISHES AS LONG AS THE DEFENDANT ARGUES OPPORTUNELY THE STATUTE OF LIMITATION RULE DURING THE PROCESS, UNLESS THE COURT IS CLOSED AS IT WAS EXPLAINED BEFORE.

THE REALITY THAT STATUTES OF LIMITATIONS OF CIVIL AND COMMERCIAL ACTIONS ARE NOT SUSPENDED, BECAUSE THERE IS NO ANY ACT THAT STATES THAT, IS A FUNDAMENTAL FACT THAT EVERYONE MUST TAKE INTO CONSIDERATION. IT MUST NOT BE INFERRED THAT THE COVID-19 AND THE COLLATERAL ECONOMIC CRISIS FREEZE THESE TIME LIMITS INSTANTLY. TO DEAL WITH THIS SITUATION IT IS REQUIRED A LOT OF NEGOTIATION CAPACITIES IN THE MIDST OF THIS COMPLEX ECONOMIC SCENE.



M: +507 6679-4646 E: CORTES@LEGALADVISORPANAMA.COM

 @PUBLIOCORTES.LAWYER