

## The situation of the pandemic in Argentina

By Maria Fabiana Compiani

A month after the declaration of the COVID-19 pandemic by the World Health Organization, the Executive Branch in Argentina issued a series of progressive measures through several decrees. First, it declared the health emergency, which enabled a series of measures to prepare the health system for a high demand for contagious treatment, then followed the preventive and mandatory isolation from March 20, first for eleven days, then extended for another twelve days and subsequently extended until April 26.

As a corollary to this, only a few activities that are essential to maintain the supply and sustainability of health and food care for the population have been excluded from the quarantine. Employers were also required to pay full wages to employees and dismissals were prohibited for a period of 60 days.

A series of measures were established to defer the payment of employer contributions, to access to credit to pay salaries and to postpone certain taxes in order to lighten the burden of companies that are currently without economic activity. Likewise, the price of rents and mortgages was frozen.

Regarding insurance, it was clarified that in the area of **automobile insurance**, the coverage will persist despite the fact it is circulating within the period of mandatory preventive isolation provided for, both in relation to the risks of voluntary and compulsory civil liability, as well as other risks that usually comprise the standard automobile policy: fire, theft, robbery, damage.

In relation to the **payment of the premium**, in principle there is no situation that justifies non-payment (these are obligations to give money and do not perish). However, there could be an alternative in view of the difficulty or impossibility of payment by applying the classic solutions provided by the basic legislation: the theory of unforeseen circumstances (section 1091 of the Civil and Commercial Code – “CCC”) or acts of God or force majeure (sections 1732/1733 of the CCC). In the meantime, some insurers have already granted the insured a grace period for the payment of the premium or have offered discounts on the premium. Likewise, for those cases in which the purpose of the business is ruined, the institute of the frustration of the end of the contract would operate (section 1090 of the CCC).

In terms of insurance that covers **property damage: fire, homeowner, comprehensive business, all risks, machinery breakdown and construction**, usually do not have exclusions related to disease spread or the outbreak of pandemics. On the contrary, these exclusions usually exist in other segments, such as personal insurance, comprehensive civil liability, professional civil liability, financial, or cancellation of events.

It should be noted that, as a result of the measures being taken by the public authority, there may be a material change in the state of the risk covered, which may be different for each insured.

Likewise, the growth in the exposure to cyber risks due to the increase in teleworking is very considerable, without having implemented, due to lack of time, adequate security measures. In this respect, it is clear that cyber fraud is not standing still.

In terms of aggravation of the risk due to events beyond the control of the insured, it is the latter's burden to notify its insurer of any change in the existing conditions in relation to what is covered at the time of concluding the contract that would have modified the conditions of the policy or determined that the insurer does not provide coverage (section 37 of the Argentine Insurance Law No. 17,418 - Insurance Law).

Although it is true that many of these modifications will be publicly known and therefore the insurer cannot allege its ignorance, however, some may also affect each insured party in particular and in relation to them the burden will be on the insured party to communicate these to the insurer, and failure to do so will result in the expiring of the insured party's rights at the time of the loss, if the failure to do so is due to its fault or negligence and it cannot prove the insurer's knowledge.

Of course, when the aggravation is slight and reasonable, once communicated by the insured, the insurer will consider itself notified without relevant consequences for the coverage. However, if the aggravation is substantial, the insurer may make suggestions to mitigate the risk, or provide for premium increases, or in extreme cases of modification of the risk, the insurer may terminate the coverage (within the time limits laid down, section 39 of the Insurance Law).

In relation to **personal insurance**, although there is a significant proportion of coverage that does not exclude pandemics (as acknowledged by AVIRA, the association that brings together life insurance companies), others do include it expressly, as well as more specific cases of disease spread, known as epidemics.