

## BEGINNING OF THE ATTENDANCE REGIME AND EXCEPTIONAL OPERATION OF CIVIL COURTS, COURTS OF APPEALS AND SUPREME COURT

Having elapsed the period contemplated for the transitory regime of Law No. 21,934, published on November 30, 2021 (the "Law"), by means of which a set of reforms to the justice system were introduced, the permanent regime provided by the Law, whose general rule is attendance regime, notwithstanding the exceptions contemplated by the Organic Code of Courts, is now in force. The main provisions of the permanent regime may be found in our [News Alert 454](#) and [News Alert 453](#).

The Law provided that until December 10, 2022, the courts with civil jurisdiction in civil and commercial matters, Courts of Appeals and the Supreme Court –among others– had to operate under a transitory regime –provided for in the sixteenth transitory article of the Law– favoring remote channels.

At the beginning of this week, the permanent regime of attendance of articles 47 D, 68 bis and 98 bis of the Organic Code of Courts came into force. Notwithstanding the foregoing, each court is empowered to develop a proposal for **exceptional operation**, being able to **govern a hybrid and different regime in each court and in the Courts of Appeals and Supreme Court**, according to the proposal that is authorized for the respective court.

### Preparation and approval of the proposal

- Courts with civil jurisdiction in civil and commercial matters: The request shall be made by the judge and after a report from the Administrative Corporation of the Judicial Branch. Such report must contain and evaluation of the court operation, based on management indicators that make it advisable to hold hearings via videoconference. Its approval shall be made by a resolution of the respective Court of Appeals.
- Courts of Appeals: The proposal for exceptional operation shall be prepared by the president of the respective Court and must be

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approved by the plenary.

- Supreme Court: The proposal for exceptional operation shall be prepared by its president and must be approved by the plenary.

### **Criteria for approval of the proposal of the exceptional operation**

The general criterion consists of reasons of good service in order to safeguard the efficiency of the judicial system to guarantee access to justice or the life or integrity of the people.

Likewise, as provided in the Organic Code of Courts, the Supreme Court issued the Supreme Court resolution No. 258-2022 that regulates the criteria to be taken into consideration by the Courts of Appeals for the approval of the exceptional operation regime, which can be [reviewed here](#).

### **Duration of the exceptional operation**

As of December 12, 2022, the approval of the exceptional operation may be requested and the proposal will have a maximum duration of one year, which may be extended once for the same period, without the need for a new request.

### **Remote appearance of the exceptional operation**

- Courts with civil jurisdiction in civil and commercial matters: the exceptional operation will enable the court to conduct remotely by videoconference the audiences within its jurisdiction.
- Courts of Appeals and Supreme Court: the exceptional operation will enable the court to conduct the hearing of cases submitted to it remotely by videoconference.

The court must ask the parties for an expeditious form of contact in order to coordinate with them the necessary logistical aspects, such as telephone number or e-mail. The parties must comply with this requirement up to two days prior to the respective hearing. If any of the parties does not timely offer an expeditious means of contact, or if it is not possible to contact it through the means offered after three attempts, which must be recorded, it shall be understood that it has not appeared at the hearing.

### **Exceptions for the remote hearings of the exceptional operation**

- Courts with civil jurisdiction in civil and commercial matters:

- Hearings in which testimonial evidence, absolution of positions, declarations of parties and expert witnesses are rendered.
- At the request of any person entitled to appear in the case, up to two days before the hearing is held, requesting that it be held in person, invoking serious reasons that make it impossible or difficult for him/her to participate, or that due to particular circumstances, the person is in a situation of defenselessness.
- Courts of Appeals and Supreme Court: At the request of any of the parties, until 12:00 noon of the day before the hearing of the case, requesting that the hearing be held in person, invoking serious reasons that make it impossible or difficult for them to participate, or that due to particular circumstances, they are in a situation of defenselessness.

### **Obstruction of the remote appearance**

The availability and proper functioning of the technological means of the parties appearing remotely in dependencies outside the Judiciary shall be their responsibility. However, the party may allege hindrance if the malfunctioning of the technological means is not attributable to it. If such an incident is accepted, the court shall set a new day and time for the continuation of the hearing, without losing what was done prior to such malfunction.

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