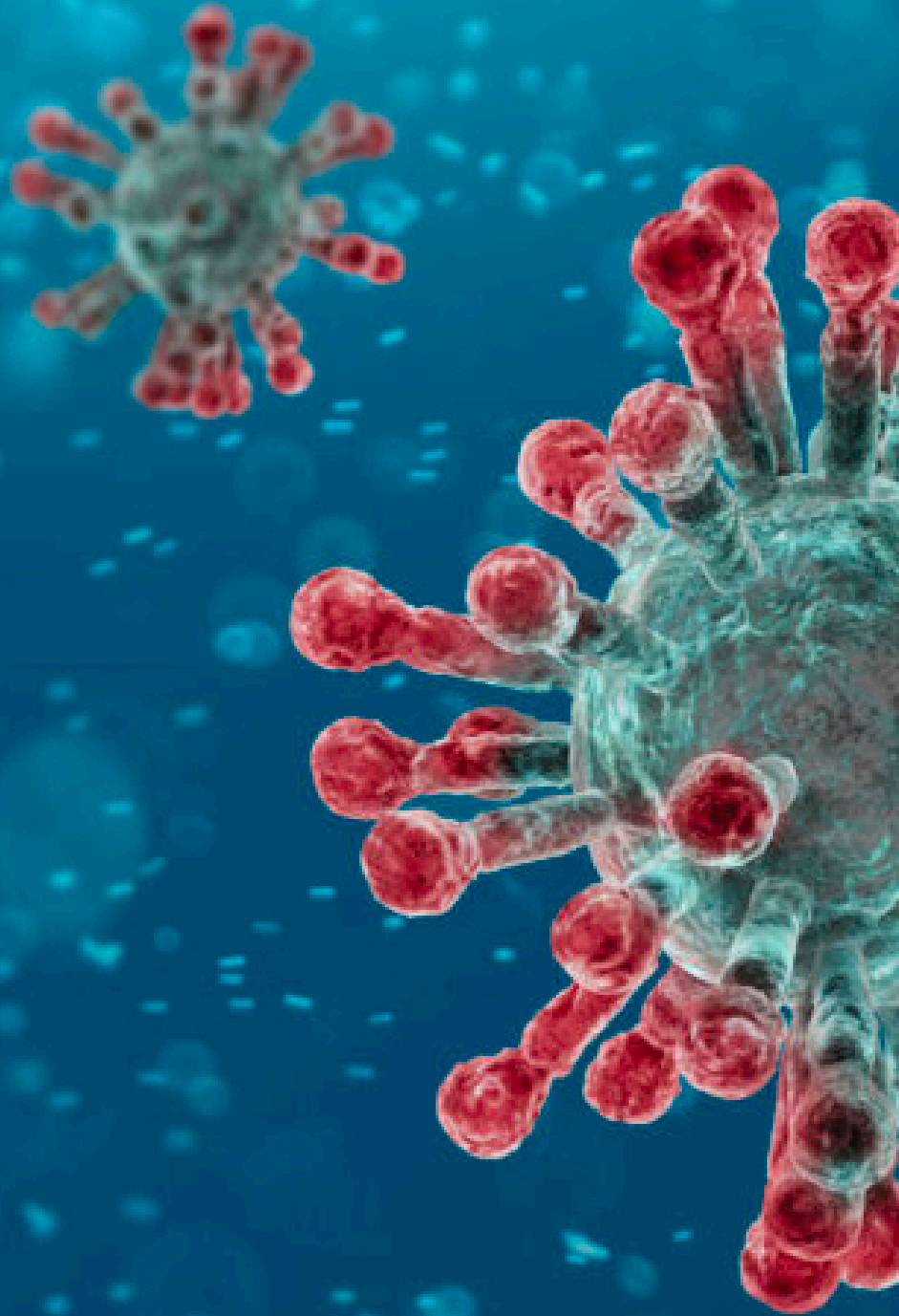


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S A N T O S

SOCIEDADE DE ADVOGADOS SP, RL
BOUTIQUE LAW FIRM

NewsLetter

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Practical Manual about Rights and Obligations | Clarifications and Answers to FAQ's with the legislative amendments of 31st of March

Applicable Laws

ORDINANCE NO. 82/2020 – DIÁRIO DA REPÚBLICA NO. 62-B/2020, SERIES I OF 2020-03-29

It sets out the essential services for the purpose of childcare in educational establishments for children or other dependants who rely on their professionals.

ORDER NO. 3863-B/2020 - DIÁRIO DA REPÚBLICA NO. 62/2020, 3RD SUPPLEMENT, SERIES II, 2020-03-27

Determines that the management of appointments and the appointments at SEF shall be done in order to guarantee unequivocally the rights of all foreign citizens with pending cases due to COVID-19.

DECREE-LAW NO. 10-K/2020 - DIÁRIO DA REPÚBLICA NO. 61/2020, 1ST SUPPLEMENT, SERIES I OF 2020-03-26

Provides an exceptional and temporary regime of justifiable absences to support the family in the context of the COVID-19 pandemic.

DECREE-LAW NO. 10-J/2020 - DIÁRIO DA REPÚBLICA NO. 61/2020, 1ST SUPPLEMENT, SERIES I OF 2020-03-26

Sets out exceptional measures to protect the credits of families, companies, private charities and other social economy entities, as well as a special regime of personal guarantees of the State, in the light of the COVID-19 pandemic.

DECREE-LAW NO. 10-G/2020 - DIÁRIO DA REPÚBLICA NO. 61/2020, 1ST SUPPLEMENT, SERIES I OF 2020-03-26

Provides an exceptional and temporary measure for the protection of jobs due to COVID-19 pandemic.

DECREE-LAW NO. 10-F/2020 - DIÁRIO DA REPÚBLICA NO. 61/2020, 1ST SUPPLEMENT, SERIES I OF 2020-03-26

Sets out an exceptional and temporary regime for fulfilling tax and social contribution obligations due to COVID-19 pandemic.

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[LEGISLATIVE ORDER NO 4/2020 - DIÁRIO DA REPÚBLICA NO. 60/2020, SERIES II OF 2020-03-25](#)

Determines the creation of a financial support line to meet the cash needs of micro tourism companies whose activity is strongly affected by the economic effects of the outbreak of COVID-19 disease.

[ORDER NO 3547-A/2020 - DIÁRIO DA REPÚBLICA NO 57-B/2020, 1ST SUPPLEMENT, SERIES II 2020-03-22](#)

Regulates the declaration of a state of emergency, ensuring the operation of supply chains for goods and essential public services, and the conditions under which they must operate.

[ORDER NO 3545/2020 - DIÁRIO DA REPÚBLICA NO 57-A/2020, SERIES II OF 2020-03-21](#)

Determines the composition of the Emergency Status Monitoring Framework.

[DECREE NO. 2-A/2020 - DIÁRIO DA REPÚBLICA NO. 57/2020, 1ST SUPPLEMENT, SERIES I OF 2020-03-20](#)

Regulates the enforcement of the state of emergency ordered by the President of the Republic

[LAW NO. 1-A/2020 - DIÁRIO DA REPÚBLICA NO. 56/2020, 3RD SUPPLEMENT, SERIES I OF 2020-03-19](#)

Exceptional and temporary measures in response to the epidemiological situation caused by the SARS-CoV-2 coronavirus and COVID-19 disease.

[ORDINANCE NO. 71-A/2020 - DIÁRIO DA REPÚBLICA NO. 52-A/2020, 1ST SUPPLEMENT, SERIES I OF 2020-03-15](#) **REVOKED**

Defines and regulates the terms and conditions for granting immediate extraordinary, temporary and transitional support to workers and employers affected by the outbreak of the COVID-19 virus, in order to maintain jobs and mitigate corporate crisis situations.

This Order is revoked by [Decree-Law no. 10-G/2020](#), but the requirements to apply for financial support, provided under this [Order no. 71-A/2020](#) of March 15, prior to the entry into force of this Decree-Law, remain in force and will be analyzed in the light of this decree-law.

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ORDER NO. 2875-A/2020 - DIÁRIO DA REPÚBLICA NO. 44/2020, 1ST SUPPLEMENT, SERIES II, 2020-03-03

Adopts the measures to ensure the social protection of beneficiaries who are temporarily prevented from exercising their professional activity by order of the health authority, due to the danger of contamination by COVID-19.

The above-mentioned Laws enforce additional exceptional and temporary measures in order to face the pandemic caused by the new Coronavirus SARS-CoV-2, the pathogen causing the disease COVID-19.

The Laws focus on several matters relevant to the day-to-day life of citizens, namely the suspension of judicial, administrative and tax deadlines, the operation of local authority and administrative bodies and rental agreements.

Measures imposed:

1 Simplification of administrative bureaucracy when adopting measures to combat the virus.

Among other measures, the Law determined the exemption of several operations and administrative decisions from the approval of "Tribunal de Contas" that would legally require such approval, in particular for the execution of contracts that are covered by Decree-Law no. 10-A/2020, of 13.03 - in other words, that are intended for the prevention, containment, mitigation and treatment of epidemiological infection by COVID-19. This measure is intended to save time in the execution of agreements between the State (in the broad sense) and third parties, so the State can promptly act.

2 Suspension of deadlines and judicial proceedings.

The Law determined the application of the judicial vacation regime to all proceedings of the courts, including the courts of law, arbitration courts, public prosecutor and courts of peace. This exceptional vacation regime also applies, duly adapted, to all proceedings that must take place in the **notary offices and registry offices**.

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Frequently Asked Questions:



1) I have the signing of the deed scheduled according to the promissory agreement, what should I do?

Since all establishments opened to the public have been ordered to close, the notaries are closed, so if the deed is scheduled to be signed in a notary's office it will not be possible to execute it.

Lawyers and solicitors will be able to make authentic purchase and sale documents, provided that all DGS (Health General Direction) guidelines are complied and none of the parties involved are put at risk.

2) Bearing in mind the date set out in the promissory agreement, in case the deed is not signed, will it be consider a default?

No, since it is a non-performance not attributable to the grantor during the period that this measure is in force, thus the deed must be rescheduled.

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The vacation regime is also applicable, duly adapted, to all administrative, sanctioning and disciplinary proceedings.

Please note that this regime also applies to administrative and tax deadlines that are in favor of individuals, especially those related to acts of judicial challenge, administrative complaint, hierarchical appeal or other procedures of same nature, as well as deadlines to practice acts related to the same tax procedures.

From our point of view, even though the wording of the law is not the best in what concerns to the suspension of urgent processes, it seems that the suspension is also applicable to urgent processes, except if it is possible to practice any judicial acts or proceedings by appropriate means of distance communication.

The Law shall only allow to perform in person the acts and urgent proceedings in which fundamental rights are at stake, such as proceedings concerning minors at risk or child custody of urgent nature and judicial processes and trials of defendants who have been arrested. Even then, they are only allowed if they do not involve more people than recommended by the health authorities and in accordance with the guidelines laid down by the competent Supreme Councils.

In order to ensure that the delay of judicial processes does not result in the **suspension or limitation of the deadlines, the Law has determined the suspension of the limitation periods for all types of processes** and procedures and has extended the deadlines as a rule for as long as this exceptional situation prevails.

In addition, the **Law has suspended all eviction orders and procedures**, as well as the proceedings for delivering rented properties when the tenant, due to a Court's decision to be pronounced, may be put in a **fragile situation** due to lack of own habitation.

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Frequently Asked Questions:

1) My tenant stopped paying the rent three months ago, can I file an eviction order?

It is our understanding that it is not impossible to file an eviction order for non-payment of the rent, the problem is that the deadlines are suspended due to the vacation regime in force, thus the enforcement of the termination of the rent agreement (residential and non-residential) is also suspended.

Eviction orders and procedures will only be suspended if it is a residential rent agreement and the tenant may be put under a fragile situation for losing his own habitation.

2) I have filled an eviction order that is pending, according to the Law, when will this order proceed?

Since it **not considered an urgent process**, the order will be suspended during the suspension of deadlines.

The eviction orders are only suspended if the tenant is under a fragile situation for losing his own habitation.

3) Eviction orders are only applicable to residential rent agreements or also to non-residential rent agreements?

Eviction orders are only suspended if the tenant is under a fragile situation for losing his own habitation, thus this measure is only applicable to residential rent agreements.

4) May I terminate my rent agreement?

During the period in which these measures are in force, the termination of rent agreements by the Landlord is not enforceable either for residential and non-residential rent agreements, thus no rent agreement shall terminate by a notice of the Landlord during this period. On the other hand, the termination of rent agreements by the tenant is enforceable.

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5) According to the law, if a establishment is closed for more than one year, the Landlord is entitle to file an eviction order. Due to the current situation, this closing period of establishments determined by the Government is suspended for one year?

Yes. It is our understanding that it is possible that, in addition to the 12 months it must be added the period that the establishments are closed due to Governments orders.

6) Is it legal for the tenant to not pay the rent during the emergency state?

There are no amendments to the law regarding the payment of the rents, so it is out understanding that **this obligation continues and is not legal to not pay the rents during this period.**

7) Can I still use the 20% penalty for the late payment of a rent?

Since the law does not regulate it, it is still applicable the penalty of 20% for the late payment of any rent.

It is important to highlight that this exceptional regime does not have a termination date and will only be cease to effective on a date to be defined by Decree-Law.

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Local Administration

The Law has determined an extension of the deadlines for regular meetings of the deliberative and executive bodies of local authorities and intermunicipal entities and has established that the obligation to hold meetings of the deliberative and executive bodies of the municipalities and parishes and deliberative bodies of the intermunicipal entities is suspended until 30.06.2020, notwithstanding their recording and availability on the website of the municipality, whenever technically feasible.

The Law allows the meetings of the deliberative and executive bodies of local authorities and intermunicipal entities to be held by videoconference or other digital means, provided that the technical conditions are met.

Collegiate Bodies of Public or Private Entities

The Law states that the participation of the members of collegial bodies of public and private entities in the meetings by remote means cannot interfere with the regular functioning of the body, namely in what concerns to the quorum and deliberations, however, the form of participation shall be recorded in the minutes.

Prevalence of Rules

It should be noted that the above mentioned Laws prevail over any other general and special legal provisions contrary to the content of this law, namely those contained in the State Budget Law, without prejudice to the powers attributed by the Constitution and by the Law to elective sovereign bodies.

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Frequently Asked Questions:



1) I am a managing partner of the Company and we need to hold an Extraordinary General meeting because need to amend the memorandum of association. How can we do it?

The Law allows the General Meeting to take place by teleconference or other electronic means, provided this procedure will be registered in the minute of the meeting.

Before the opening of the agenda, it is advisable that the Chairman of the Board communicate by text message or email with the Shareholders who are invited to the teleconference, in order to guarantee that the Shareholders manifest their awareness of the agenda and confirm their presence in the virtual meeting.

After the deliberation, a minute should be made, indicating expressly what decisions were made and who voted in favor and against those decisions.

You may send the minutes to your legal advisor or Lawyer to proceed with the necessary procedures to register the decisions electronically on the Portuguese site for company's registrations.

2) Until when is it possible to have the Annual General Meeting of Shareholders' whose legal deadline is on 30th of March 2020?

It is possible to convene Annual Meetings until 30th of June 2020.

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Exceptional Measures Established by Law to Mitigate the Pandemic in the Economy

A Regarding the relations between individuals:

a) It is eliminated the cost of payment by cards, now with no minimum amount set;

b) The Government has approved new credit lines for the companies with a grace period until the end of the year and amortized in four years. These credit lines are meant for the affected companies.

This new package of measures are an addition to the 200 million euros business support line and to the partial payment of the salaries employees who are in lay off regime, being supported 2/3 of gross pay up to a maximum of 1.905 euros.

From the entire amount to pay to the employee, 70% is supported by Social Security and 30% by the employer.

Lay Off (For more information, please check our newsletter about the lay off regime on www.dlas.com.pt)

The Lay Off is a measure that must be indispensable to ensure the economic viability of the company and the maintenance of jobs. It is the temporary reduction of normal working periods or the suspension of employment agreements by the initiative of the companies for a certain period due to:

- Market reasons;
- Structural or technological reasons;
- Natural disasters or other events that have seriously affected the normal activity of the company.

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Lay Off (For more information, please check our newsletter about the lay off regime on www.dlas.com.pt)

In order to combat the effects of the new coronavirus and the containment measures, simpler procedures, “the simplified Lay off regime”, have been determined in the following cases:

a) Total or partial shutdown of the company or establishment, due to the obligation to close facilities and establishments, provided in Decree No. 2-A/2020 of 20th of March, or to legislative or administrative orders, according to Decree-Law no. 10A/2020 of 13th of March or under the Law of Civil Protection Basis, approved by Law no. 27/2006 of 3rd of July, as well as the Law of Health Basis, approved by Law no. 95/2019 of 4th September, regarding the establishment or company shut down and including the workers directly affected; or

b) Upon a jointly declaration from the employer and the accountant of the company that certifies:

- I -

The total or partial shutdown of the company’s or establishment’s activity which results from the interruption of global supply chains, or the suspension or cancellation of orders;

(It is considered that service providers are also included in this case)

- II -

The abrupt and sharp drop of at least 40% in the invoicing within a period of thirty days prior to the application before the social security services, with reference to the monthly average of the two months preceding that period, or in relation to the same period of the previous year, or, for those who started business for less than 12 months, the average for that period.

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Exceptional Measures Established by Law to Mitigate the Pandemic in the Economy

B Regarding the relations between individuals or companies and the Tax Authorities and Social Security:

a) The law provides a temporary exemption from paying social security contributions for companies which are “covered by any of the measures provided for in the decree order” which was approved to deal with the epidemic;

b) Flexibility in tax payments for companies with a turnover up to 10 million euros in 2018 or those that started their activity on the 1st of January of 2019. All the other companies or self-employed workers may benefit from this provision, when there has been a decrease in turnover of at least 20% in the average of the three months preceding the month in which this obligation exists compared with the same period of the previous year.

Which taxes are covered by this measure?

- VAT on a monthly and quarterly basis;
- The payment of the **IRS** withholding taxes to the State;
- The payment of the **IRC** withholding taxes to the State.
- Payments to Social Security.

The Easing of Tax Payments, VAT Payments and Withholding Tax

(for more information, please check our newsletter about the easing of tax payments at www.dlas.com.pt)

To whom is applicable?

Automatically to:

- Taxable person who have had a turnover of up to EUR 10 000 000.00 in 2018;
- Taxable person whose activity falls within the closed sectors, according to article 7 of Decree no. 2-A/2020 of 20th of March in its latest version;
- Taxable person who started the activity on or after the 1st of January 2019;
- Taxable person who have restarted activity on or after the 1st of January 2019, if they did not have turnover in 2018

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By application:

- When a taxable person declares and demonstrates a decrease in the invoicing communicated through the E-Fatura of at least 20 % in the average of the three months preceding the month in which this obligation exists, compared to the same period of the previous year.

Nota: Unlike to normal regime, the payment plan with installments is not subject to a guarantee.

When should the withholding taxes of IRS, IRC and VAT be fulfilled by a taxable person?

- In the **terms and dates set out** in the articles 98º of CIRS, 94º do CIRC and article 27º of VAT (For IRS and IRC withholding: until the 20th day of the following month; for a monthly VAT payment: until the 15th day of the following month; for a quarterly VAT payment: until the 29th day of the 2nd following month). ;
- In **three or six monthly installments**, with no interest (in the previous law of 18th of March was set that the payment in 6 installments would implied the payment of interest in the last three months. In this new law, the taxable person may choose to pay in 6 months with no interest and no guarantees).

When are the payments due?

- The first instalment is due on the due date;
- The remaining instalments are due on the same date of the following months.

The applications to pay in 3 or 6 installments must be submitted online until the due date of the voluntary payment.

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Social Contributions

To whom it applies?

To employers of the private and social industry with:

a) Less than 50 workers;

b) A total of workers between 50 and 249 workers providing there is a turnover of at least 20% of the invoicing communicated at E-Fatura during the months of March, April and May of 2020, comparing to the same period of the previous year, or for those who have started their activity for less than 12 months at the average of the activity period as long as the employer shows these results and a certificate by the accountant of the company during the month of **July 2020**.

c) A total of 250 or more workers, provided that it is a private institution of social charity or equivalent, or that the activity of such employers falls within the shutdown sectors under the terms of Article 7 of Decree No. 2-A/2020, of March 20, or in the sectors of aviation and tourism, and **provided that they present a drop of at least 20% of the invoicing communicated through E-Fatura in the months of March, April and May 2020**, compared to the same period of the previous year or, for those who started the activity less than 12 months ago, at the average of the period of activity that has elapsed as long as the employer shows these results and a certificate by the accountant of the company during the month of **July 2020**.

Note: It is our opinion that the drop of the invoicing mentioned on a) and b) above must be analyzed on a monthly basis and only during the months where there is a drop may the tax person postpone the payment of contributions.

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Social Contributions

When should a taxable person comply with the obligations above mentioned?

The employer's contributions due in March, April and May 2020 may be paid as follows:

- a) One third of the contributions are paid in the month in which they are due;
 - b) The amount of the remaining two thirds is paid in equal instalments in July, August and September 2020 (three-month payment option) or in July to December 2020, without interest.
- The employers who have already paid all the contributions due in March 2020, the postponement starts in April 2020 and ends in June 2020.
 - The postponement of the payment of contributions under this article is not subject to request, however in **July 2020** the employers must indicate in the SS Directa which of the payment periods they intend to use: three or six instalments.

Self-Employed Workers

- The postponement of contributions due by self-employed workers is applicable to the months of April, May and June 2020 and contributions may be paid according to the above conditions.

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Exceptional Measures Established by Law to Mitigate the Pandemic in the Economy

B Regarding the relations between individuals or companies and the Tax Authorities and Social Security:

c) The following measures have been decided for IRS:

The special payment in account to be made in March may take place until 30 June 2020.

d) As for IRC:

- The periodic income tax return for the 2019 tax period may be submitted until 31st of June 2020;

- The first special payment on account and the first additional payment on account due in July may be paid until 31st of August 2020.

e) It has also been recognized that a medical certificate attesting the positive result of COVID-19 infection or the necessity of isolation measure is sufficient to justify to have a justifiable reason for tax compliance. This measure covers both taxpayers and certified accountants.

f) A credit line named “Covid -19 - Fundo de Maneio” was made available in order to support the working capital needs of companies.

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Compliance with the visiting or residence regime in the exercise of parental responsibilities during the State of Emergency

The Article 5, paragraph 1, point j) of the Decree 2-A/2020 of 20/03/2020 states that :

"Citizens that are not covered by the provisions of the preceding articles may only circulate on public spaces and streets, or on private spaces and streets equivalent to public roads, for any of the following purposes: (j) displacements for imperative family reasons, namely to comply with parental responsibilities, as determined by agreement between the parents or by the competent court".

Frequently Asked Questions:



1) Can I pick up my child from the other parent's house during the visiting or residence days that I am allocated?

Yes, it is allow regular displacements of parents and minors to fulfill the regime of visits/residence of parental responsibilities since they are considered movements for imperative family reasons.

2) Can I change the visiting or residence days with my son that were allocated by the Court?

Yes, by mutual agreement of both parents it is possible to change the visiting or residence days, being necessary to settle the new days in writing (text message or email).

If an agreement is not possible, it is only possible to change the days with a Court decision.

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