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CORPORATE AND INSOLVENCY LAW COVID-19 EXTRAORDINARY MEASURES IN CORPORATE AND INSOLVENCY MATTERS

The state of alarm declared in Spain on 14 March 2020 in order to deal with the health crisis caused by COVID-19 has led to severe restrictions on the freedom of movement of citizens that could prevent the functioning of the governing bodies of companies and other legal persons.

Royal Decree Law 8/2020 of 17 March (as amended by Royal Decree-Law 11/2020 of 31 March) has adopted the following extraordinary measures in this area (Article 40):

- During the period of the state of alarm, the **meetings of the administrative body and the general meetings of the companies can be held by videoconference or teleconference**, even if this is not provided for in the statutes. All members must have the necessary means and the secretary must acknowledge their identity and state this in the minutes, which must be sent by e-mail immediately to all attendees.
- Also during the period of the state of alarm, **the administrative body (but not the general meeting) of the companies can adopt resolutions by written procedure**, even if the statutes do not allow this method, provided that the president so decides or at least two of the members of the body request it (therefore, it is no longer necessary for all the members to agree to the written procedure). While the system is flexible and allows for different modalities, as a general rule the procedure will be initiated by a written request for a vote sent by the president to all members, and members will have 10 days from receipt (unless the statutes provide otherwise) to cast their vote. The latter communication must guarantee its authenticity. The minutes must record the vote cast by each of the members.

These rules also apply to associations, cooperatives and foundations, as well as to any commission other than the administrative body. The meetings will be understood to be held at the domicile of the legal entity.

If the general meeting has already been called before 14 March 2020, the administrative body may cancel it or change the place and date of the meeting. To do so, it must publish a notice at least 48 hours in advance on the company's website (provided that it has been registered in the Mercantile Registry) or, failing that, in the BOE (although the rule should refer to the BORME). In the event of a cancellation, the meeting must be reconvened within one month of the end of the state of alarm.

The notary requested to draw up the minutes of the meeting may attend the meeting by videoconference.

Additionally, Royal Decree Law 8/2020 has introduced **exceptional rules applicable to the formulation, audit and approval of the financial statements**:

- The deadline for formulating the financial statements, which in general is 3 months from the end of the financial year, shall be 3 months from the end of the state of alarm. However, the formulation of the financial statements made during the state of alarm is valid.
- If the financial statements are formulated before or during the state of alarm, the period for their verification by the auditor shall be understood to be extended by 2 months from the end of the state of alarm.
- The ordinary general meeting which must approve the financial statements shall meet within 3 months from the end of the period for formulating them, i.e. within 6 months from the end of the state of alarm. The deadline for filing the financial statements with the Mercantile Registry remains the same: 1 month from their approval.
- The proposed allocation of earnings set out in the notes to the financial statements may be replaced or this item may be withdrawn from the agenda of the general meeting.

The financial consequences that the state of alarm may cause to the companies have motivated the following **measures in the corporate and insolvency areas**:

- In the event that, before or during the state of alarm, a **legal or bylaw cause for dissolution arises** (in particular, the reduction of equity to less than half of the capital), the period of 2 months within which the directors have to call the

general meeting that will have to resolve the dissolution or enervate the cause is suspended until the end of the state of alarm. If the cause for dissolution has occurred during the period of the state of alarm, the directors are not liable for the company's debts incurred during that period (although, in accordance with the general rule, such liability only arises in the event of failure to call the general meeting).

- During the period of the state of alarm, the **debtor who is in a state of insolvency is not obliged to file for insolvency**. This prevents the failure to comply with the 2-month deadline for filing such an application from resulting in the classification of the insolvency as culpable and in the liability of the directors. If the debtor has notified the court that negotiations have been initiated with its creditors (so-called "pre-insolvency proceedings"), he is also not obliged to file for insolvency while the state of alarm is in force. However, the suspension of all legal proceedings provided for in the Royal Decree on the state of alarm means that the debtor will not be able to file for insolvency either, should he wish to benefit from the effects of the same.
- Until 2 months have elapsed from the end of the state of alarm, any applications for insolvency filed by the creditors will not be admitted by the court, and if the debtor has submitted its own application for insolvency, it will be admitted with preference, even if it has been filed after the creditors' application.

Finally, Royal Decree Law 8/2020 has introduced two exceptional corporate measures of lesser relevance:

- During the state of alarm, the shareholders of capital companies cannot exercise their right to separation.
- If during the state of alarm, the term of the company as set out in the statutes ends, the company will not be dissolved until 2 months have elapsed from the termination of said state.

(updated as per Royal Decree-Law 11/2020 of 31 March)

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