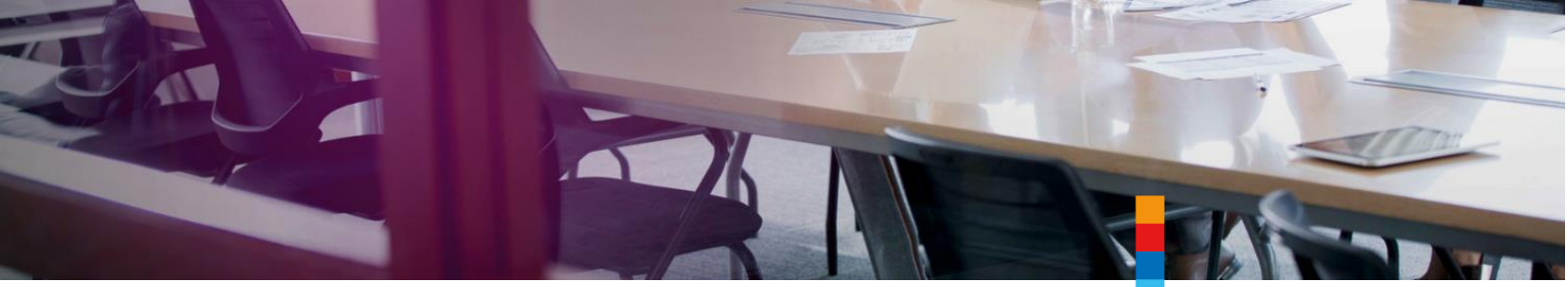

NEWSLETTER COVID-19
23 MARCH 2020

LOZANO SCHINDHELM

EDITORIAL

Dear reader,

The state of alarm declared in Spain on 14 March 2020 due to the sanitary crisis caused by COVID-19 has led to severe restrictions on the free movement of citizens and goods, as well as on the operation of businesses. Below we inform you of the main exceptional measures approved by the Spanish Government through Royal Decree Law 8/2020 of 17 March, as well as further regulations adopted in order to deal with the sanitary crisis.

Your team of Lozano Schindhelm

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I. MEETINGS AND RESOLUTIONS OF THE ADMINISTRATIVE BODY

During the period of the state of alarm, the meetings of the administrative body of the companies can be held by videoconference, even if this is not provided for in the statutes. The videoconference must ensure authenticity and bilateral or plurilateral connection in real time with image and sound of all attendees. Teleconferencing is not allowed, unless provided for in the statutes.

Also during the period of the state of alarm, the administrative body 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 governing body. The meetings will be understood to be held at the domicile of the legal entity.

II. GENERAL MEETING

On the other hand, the above described rules do not apply of the general meeting of shareholders, so that the following solutions are possible in relation to it:

- Meeting by videoconference, teleconference or written procedure if provided for in the articles of incorporation or.

  In our opinion this is also possible if all members agree and sign the minutes as a universal meeting.

- Cancellation or change of place and date of the meeting if it has already been called before 14 March 2020. To do this, the administrative body 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.

III. FORMULATION, AUDIT AND APPROVAL OF THE FINANCIAL STATEMENTS

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.
- If the financial statements have already been drawn up by 14 March 2020, the deadline for their verification by the auditor (when this is obligatory) 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.

However, the deadline for filing the financial statements with the Mercantile Registry remains the same: 1 month from their approval.

IV. RISE OF A CAUSE FOR THE DISSOLUTION OF THE COMPANY AND APPLICATION FOR INSOLVENCY

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.

V. FURTHER CORPORATE LAW MEASURES

- During the state of alarm, the shareholders 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.

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LABOUR LAW AND SOCIAL SECURITY LAW

I. HOME OFFICE AND FLEXIBLE WORKING HOURS

If technically and reasonably possible, companies must set up alternative work opportunities (especially home office). Said measure must be given priority over a reduction or suspension of the activity.

In these cases, the requirements of the occupational health and safety regulations are met by a voluntary risk evaluation of the employees.

Employees who can prove that they have to care for their spouse or registered partner and family members up to the second degree have the right to adjust and/or reduce their working hours if this is due to exceptional circumstances relating to measures to prevent the spread of COVID-19. The same applies in the event of exceptional circumstances (closure of a day-care centre, etc.) due to the crisis. In this case, the content and scope of the adjustment is first proposed by the employee. The request must be justified, reasonable and proportionate. Possible adjustments may include the distribution/change of working hours, shift changes, flexible working hours, a change of place of work, a change of function, etc.

A reduction in working hours (up to 100%) may also be required, which is accompanied by a corresponding reduction in salary. This must be notified to the company 24 hours in advance. Employer and employee are obliged to find a mutually acceptable solution in view of the exceptional circumstances.

II. SUSPENSION OR LIMITATION OF WORKING TIME OF EMPLOYMENT CONTRACTS (ERTE)

A basic distinction is made according to the reason for initiating the procedure: (a) either force majeure or (b) economic, technical, organisational and production reasons. Both procedures have now been simplified.

In each individual case, it must be carefully examined whether the effects which cause the company to initiate the procedure are directly caused by the corona pandemic (e.g. companies which had to cease operations due to the alarm decree) or whether they only feel the effects very directly. In order to be able to make use of the special facilitation of the procedure due to force majeure, it may be necessary to prove that the company is affected accordingly.

III. ERTE DUE TO FORCE MAJEURE

Situations treated as cases of force majeure include, but are not limited to, situations resulting from a decline in business activity due to the virus and involving the following scenarios: suspension or cancellation of activities, temporary closure of premises open to the public, restrictions on public transport and general freedom of movement, shortfalls in supplies which seriously prevent the exercise of normal activity or, in urgent and extraordinary situations, due to the infection of an employee or preventive isolation measures ordered by the health authorities.

The procedure for an ERTE due to force majeure is now as follows:

a) Initiation, at the request of the company, to be accompanied by a report on the link between the reduction in activity as a result of COVID-19 and, where appropriate, supporting documents. The company must inform the employees about the application and send the report and other additional documents to the employee representation in advance.
b) The labour authority shall examine the existence of force majeure.
c) The labour authority must issue a decision on the application within five days (if necessary, a prior opinion from the Labour and Social Security Inspectorate must be obtained).
d) The company may then decide to suspend contracts or reduce working hours, with effect from the date of the event triggering the force majeure (retroactive).

e) The opinion of the Labour and Social Security Inspectorate, which is optional for the labour authority, must be issued within a non-extendable period of five days.

For the duration of an ERTE due to force majeure, the company's social security contribution will be reduced by 100% (upon application) if the company had fewer than 50 employees on 29 February 2020, or by 75% if it had more than 50 employees on the reference date.

This reduction has no effect on employees; the contributions for the period in question are deemed to have been paid in every respect.

IV. ERTE DUE TO ECONOMIC, TECHNICAL, ORGANISATIONAL AND PRODUCTION REASONS

The procedure for ERTE has also been simplified for economic, technical, organisational and production reasons. Despite the special situation, it is to be expected, based on the experience of the first few days, that the labour authorities will handle many applications under this category.

No reductions in social security contributions are possible for these ERTE

Employees will receive unemployment benefits during the ERTE (regardless of the reason for which the procedure is initiated). This also applies even if they have not yet fulfilled the minimum period for payment.

The period of the relationship of unemployment benefit due to the corona virus is not counted towards the entitlement to a later receipt of unemployment benefit.

The extraordinary measures described above in the area of labour and social security law are only applicable if the company undertakes to maintain the employment of the employees for a period of six months from the date of resumption of regular activity (6th additional provision).

SELF-EMPLOYEES

For self-employed persons whose activity has been suspended due to the state of alarm or whose turnover has fallen by more than 75% due to the crisis (comparison of month of application compared to the average of the previous six months), the procedure for suspension of activity has been facilitated (initially for one month). For this period, all contributions are considered paid and the time is not counted towards later proceedings for suspension of activities.

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LITIGATION

Royal Decree Law 463/2020 of 14 March, which ordered the state of alarm in Spain, adopted a series of measures in the procedural field.

I. GENERAL SUSPENSION OF TERMS AND DEADLINES

The first point of the second additional provision of the Royal Decree Law lays down the suspension of terms and the suspension and interruption of the deadlines provided for in the procedural laws for all jurisdictions since its publication on 14 March 2020. The calculation of the deadlines shall resume at the moment when the state of alarm or, if applicable, its extensions cease to be valid.

This is a general suspension measure, as it applies to all proceedings in all jurisdictions. In the case of proceedings in which such a suspension has already been agreed before the state of alert has been declared, the suspension shall apply from that moment.

By order of the Supreme Judicial Council of 14 March 2020, the suspension also extends to the holding of hearings and court trials.

II. EXCEPTIONS TO THE GENERAL SUSPENSION OF TERMS AND DEADLINES

The general suspension of terms and deadlines shall not apply to the following procedures:

- in the area of criminal law: procedures and measures with a higher degree of protection, such as habeas corpus, on-call services, assistance to the detainee or precautionary measures in the field of gender-based violence and procedures in juvenile criminal law, as well as any other investigative measures which cannot be postponed because of their urgency.
- In the area of administrative law, the procedure for the protection of fundamental rights of individuals under Article 114 of the Law on Administrative Procedure remains in force.
- In the field of labour law, procedure for collective conflicts.
- In proceedings concerning the capacity of individuals, for judicial measures in the event of involuntary detention.
- In family law matters, for protective measures, maintenance, child abduction and protective orders.

The Royal Legislative Decree also gives the judges certain discretion in assessing the measures required in any proceedings to protect the rights and legitimate interests of the parties in order to avoid irreparable harm.

III. SUSPENSION OF LIMITATION AND LAPSE PERIODS OF ACTIONS AND RIGHTS

In accordance with the fourth additional provision of the Royal Decree Law, the periods of limitation and lapse of any actions and rights have been suspended during the period of validity of the state of alarm and, when applicable, its extensions.

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TAX LAW

I. EXTENSION OF TAX PERIODS

I.1. DEADLINES EXTENDED UNTIL 30 APRIL 2020

The following deadlines will be extended until 30 April 2020 or, if the regulation expressly provides for this, to a later date, provided that these deadlines have not yet expired at the time of entry into force of the Royal Legislative Decree 8/2020, i.e. 18 March 2020:

- Deadlines fort the payment of tax debts, whether (a) in the voluntary period, (b) in enforcement proceedings notified after 1 March 2020 (c) in case of enforcements, or (d) in assessments notified after 1 February 2020.
  If a tax assessment was notified before the Royal Legislative Decree came into force, the deadline for tax payment is extended until 30 April 2020, provided that the deadline for tax payment ends between 18 March and 30 April.
- Deferments and/or instalments granted before 18 March 2020.
- The enforcement of security rights in relation to real estate is suspended.
- The time limits for electronic bidding procedures and the allocation of assets, as provided for in articles 104.2 and 104 bis of the General Collection Order, approved by Royal Legislative Decree 939/2005, of 29 July.
- The deadlines for submitting comments in relation to tax authority decisions (audit, administration, seizure or sanction proceedings) and requests for tax information that have not been completed by 18 March.
- The deadlines for submitting comments in the case of seizure procedures.
- The deadlines for submitting comments in the event of the initiation of such proceedings or hearings, tax proceedings, sanction proceedings or declarations of nullity, tax refunds, the correction of material deficiencies and revocations that had not been completed by 18 March.
- The deadlines for submitting comments in relation to notices and requests from the Directorate General of Cadastre for which the deadline of 18 March is still running.

I.2. DEADLINES EXTENDED UNTIL 20 MAY 2020

The following deadlines shall be extended until 20 May 2020 or, if the regulation expressly provides for this, to a later date if the deadlines have been notified from 18 March 2020 onwards:

- The deadlines provided for in Articles 62.2 and 5 of the General Tax Code. If a tax assessment was notified before the Royal Legislative Decree came into force, the deadline for payment of the tax is extended until 20 May 2020, unless the deadline resulting from the general regulation is longer.
- The expiry of instalment payments and partial payments in case of granted deferment and partial payment agreements.
- The deadlines relating to auctions and the allocation of goods referred to in Articles 104.2 and 104 bis of the General Collection Order.
- Injunctions, seizure proceedings, requests for information and opening of proceedings with regard to the submission of opinions or hearings.
- Acts opening proceedings in respect of opinions or hearings notified by the Directorate-General for Cadastre from 18 March onwards.

I.3. GENERAL PROVISIONS FOR THE EXTENSIONS

There is no need to apply for an extension, so the extension is granted ex officio.

If the taxpayer complies with the request or submits the statement or documents requested despite the extension being granted, this act is deemed to have been performed.

These changes to the deadlines do not apply to customs legislation, as the specific provisions must be taken into account.

I.4. NON-EXTENDABLE DEADLINES

However, as emphasised in the Royal Legislative Decree 465/2020 of 17 March, the following deadlines are not extended:

- The deadlines for filing tax declarations such as the 720 model, the deadline for which is 31 March 2020, or the corresponding tax declarations for the first quarter of 2020 (payroll tax, VAT declaration, etc.) the deadlines of which are 20 April 2020.
- The deadlines for filing and paying self-assessment tax declarations in accordance with the specific provisions in force (e.g. VAT declarations and declarations of partial payments).
- The payment of periodic taxes (e.g. trade tax).
- The deadlines for filing tax declaration in proceedings without a self-assessment obligation (residual cases). In these cases, however, the obligation to pay is suspended.

II. INTERRUPTION OF DEADLINES

The period of validity of Royal Legislative Decree 8/2020, i.e. from 18 March to 30 April 2020, does not cover the maximum duration of tax proceedings before the State Revenue Agency, which means that during this period the Revenue Agency can take the necessary steps.

Nor does it count for the limitation of taxes: limitation periods and preclusion periods for tax claims during this period are suspended.

For the purpose of calculating the deadlines in opposition proceedings and administrative proceedings, the decisions terminating the proceedings shall be deemed to have been notified if the attempt at notification is proved.

Until the expiry of this deadline or until notification by the tax office, if later, the period for filing an objection or appeal against tax assessment notices, as well as the administrative appeal procedure in respect of decisions, shall not commence. Therefore, the specific regulations apply to administrative decisions and rulings that have already been served before 18 March 2020. The Royal Legislative Decree 8/2020 is not applicable in this context.

The deadline for lodging an appeal begins on 1 May for administrative decisions notified between 18 March and 30 April.

III. TAX DEBT DEFERRAL

Royal Legislative Decrees 7/2020 of 12 March and 8/2020 provide for the deferral of certain tax debts: These measures apply to tax debts arising from tax declarations and self-assessments for which the payment period is from 13 March 2020 to 30 May 2020 inclusive.

The conditions for the deferral of the debt are as follows:

- The debtor must be a natural person or legal entity with a business volume not exceeding 6,010,121.04 € per year (small units).
- The debt must be less than 30,000 €.
- It is not necessary to issue guarantees.
- The deferral is granted for a period of 6 months, with no interest on arrears only during the first 3 months.

Furthermore, the deferral can also affect the following tax debts:

- The tax debts which a person entitled to deduct or a person obliged to make advance payments must meet.
- For derived tax liabilities.
- The advance payments of corporate income tax.

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