

March, 23rd 2020

Spain – Main business measures introduced in Spain to deal with the economic and social impact of the health emergency

In recent weeks, a series of extraordinary measures have been decreed in order to mitigate the economic effects of the health emergency generated by COVID-19, especially after the World Health Organization (WHO) officially declared a pandemic on 11 March 2020.

Among them, the following normative instruments stand out:

- *Royal Decree 463/2020 of 14 March declaring the state of alert for the management of the health crisis situation caused by COVID-19* (¹amended in certain respects by *Royal Decree 465/2020 of 17 March*²).
- *Royal Decree-Law 8/2020 of 17 March on urgent extraordinary measures to deal with the economic and social impact of the COVID-19*³.

There have also been several communications, orders and instructions from various public entities and authorities that have an impact on the normal performance of the company's daily activities.

For all the above reasons, given the exceptional nature of the moment and for information purposes, we proceed to point out a summary of the main issues that we believe may have a greater impact on a business level, in relation to each specific area.

1. [General measures](#)
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5. [Corporate and registration measures](#)
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¹ Royal Decree 463/2020 of 14 March. - [\[LINK\]](#)

² Royal Decree 465/2020 of 17 March. - [\[LINK\]](#)

³ Royal Decree-Law 8/2020 of 17 March. - [\[LINK\]](#)



Also, since it is expected that new measures will be decreed in the coming days and/or weeks, this document may be subject to changes and/or nuances.

1. GENERAL ACTIVITIES

The main measure that has been taken is the declaration of a **state of emergency health alert**, establishing a series of limitations on the freedom of movement of people and vehicles, as well as the prohibition of certain commercial activities, especially those aimed at retail trade and establishments open to the general public.

In principle, the measures contained in RD 463/2020 will be in force for an initial period of fifteen calendar days, i.e. until 30/03, without prejudice to any extension for justified reasons.

2. TAX MEASURES

So far, the main measures that have been taken in the **tax area** are the following:

- **Possibility of requesting deferment of tax debts.** SMEs with a turnover of less than Euro 6 Million per year may request the deferral of tax debts (settlements / self-assessments) of less than Eur 30,000 that fall due before 30/05, for a period of up to 6 months, of which the first 3 months will be without interest.
- **General extension of (some) tax deadlines.** The following general extensions are established:
 - Tax deadlines extended **until 30/04**: (i) the of tax debts arising from settlements made by the Administration before 18/03; (ii) the expiry of deferrals or instalments granted and notified before 18/03; and (iii) the procedures for the application of taxes, penalties and reviews notified before 18/03.
 - Tax deadlines extended **until 20/05**: (i) the payment of tax debts arising from settlements made by the Administration since 18/03; (ii) the due dates of deferrals or fractions thereof notified as of 18/03; and (iii) the procedures for the application of taxes, penalties and reviews notified as of 18/03.

Similarly, the period from 18/03 to 30/04 will be suspended for tax purposes: (i) term to file economic-administrative appeals or claims; (b) maximum term of duration of tax application, penalty or review procedures processed by the Spanish Agency for Tax Administration



("AEAT", by its initials in Spanish); and (c) term of prescription of the right to verify and investigate of the AEAT with respect to tax obligations of previous years.

NOTE: It is important to note that the general deadlines for filing state monthly or quarterly information returns or tax self-assessments (income tax, VAT, withholdings, etc.) have NOT been postponed.

3. LABOUR MEASURES

So far, the main measures taken in the **labour field** are as follows:

- **Preference for telecommuting.** Wherever technically possible and reasonable, companies should adopt alternative organisational systems such as distance working.
- **The worker's right to adapt the timetable and reduce the working day.** Exceptionally, employees may, in certain exceptional circumstances, adapt or reduce their working hours (e.g. care of a family member, up to the second degree of consanguinity).

This right is established at the initiative of the worker, who may establish conditions such as change of shift, change of timetable, flexible timetable, split or continuous working day, change of working center, etc.), with the possibility of reducing up to 100% of the working day with proportional pay.

- **Extraordinary benefit for cessation of activity.** Exceptionally, and for a period limited to one month, self-employed workers or those whose activities are suspended, by virtue of the deadline laid down in Royal Decree 463/2020 on the state of alert, or when their turnover in the month prior to that for which the benefit is requested is reduced by at least 75% in relation to the average turnover for the previous six-month period, shall be entitled to an extraordinary benefit.
- **Exceptional measures in relation to procedures for the suspension of contracts and reduction of working hours due to force majeure.** The consequences established in article 47 of the Workers' Statute will be applied when the suspension of the contract and reduction of the working hours per day is due to force majeure. Force majeure will be understood as: *"having its direct cause in losses of activity as a consequence of the COVID-19, including the declaration of the state of alarm, which imply the suspension or cancellation of activities, temporary closure of premises of public affluence, restrictions on*



public transport and, in general, on the mobility of people and/or goods, lack of supplies that seriously impede the development of the activity, or in urgent and extraordinary situations due to the contagion of the staff or the adoption of preventive isolation measures decreed by the health authority, which are duly accredited".

Particularities of the procedure:

- At the company's request, a report will be provided on the link between the loss of the activity and COVID-19, as well as, where appropriate, the corresponding supporting documentation. This request must be communicated to the workers and this report and documentation, if any, must be sent to the workers' representatives.
- The existence of force majeure must be established by the labour authority, whatever the number of workers affected.
- Following a report from the Labour and Social Security Inspectorate, this request will be optional for the labour authority, and will be issued within a non-renewable period of five days.
- The decision of the labour authority shall be issued within five days of the request, and shall be limited to ascertaining the existence, where appropriate, of the force majeure alleged by the company. Such a decision shall take effect from the date of the event causing the force majeure.
- The processing of files affecting worker members of worker cooperatives and labour companies included in the General Social Security System or in some of the special systems that protect the contingency of unemployment, will be subject to the special rules.

The present procedure shall enjoy the recognition of the right to contributory unemployment benefit and shall not count the time that the unemployment benefit is received at the contributory level.

- **Exceptional measures in relation to the procedures of suspension and reduction of working hours for economic, technical, organizational and production reasons.** The procedure set out in the regulations for these cases will be applied:
 - In the event that there is no legal representation of the workers:

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- ✓ The representative committee will be made up of the most representative unions in the sector to which the company belongs and will be entitled to form part of the negotiating committee for the applicable collective agreement. The committee will be made up of one person from each of the unions that meet these requirements, with decisions being taken by representative majorities.
 - ✓ In case this representation is not conformed, the commission will be integrated by three workers of the company itself.

In any of these cases, the representative commission must be set up within a period of five days, which cannot be extended.

- The period of consultation with the employees' representatives or the representative body provided for in the previous point must not exceed the maximum period of seven days.
- The report of the Labour and Social Security Inspectorate, whose request will be optional for the labour authority, will be issued within a non-renewable period of seven days.
- The processing of files affecting worker members of worker cooperatives and labour companies included in the General Social Security System or in some of the special systems that protect the contingency of unemployment, will be subject to the special rules.

The present procedure shall enjoy the recognition of the right to contributory unemployment benefit and shall not count the time that the unemployment benefit is received at the contributory level.

- **Extraordinary measures in the area of contributions with regard to the procedures for the suspension of contracts and reduction of working hours due to force majeure related to COVID-19.**

Total or partial exemption from the business contribution established in article 273.2:

- The General Treasury of Social Security will exempt the company from the payment of these concepts when the company, as of 29 February 2020, had less than 50 workers.

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- However, if the company has 50 or more employees and is registered with the Social Security system, the exemption from the obligation to pay contributions will be 75% of the company's contribution.

Exemption from contributions will be applied by the General Treasury of Social Security at the request of the employer, after communication of the identification of the workers and the period of suspension or reduction of the working day.

The measures of the three previous points, will be in force while the extraordinary situation derived from the COVID-19 is maintained.

- **Safeguarding of employment.** The planned extraordinary measures in the field of employment will be subject to a commitment by the company to maintain employment for a period of six months from the date of resumption of activity.

Time limitation. The specialties in matters of contract suspension will not be applied to the procedures of contract suspension or reduction of working hours initiated or communicated before the entry into force of RDL 8/2020. On the other hand, the protection measures for unemployment and contributions will be applicable, as long as they derive directly from the COVID-19.

4. MEASURES IN RELATION TO PROCEDURAL AND ADMINISTRATIVE DEADLINES

So far, the main measures taken in the **procedural-administrative field** are as follows:

- **General suspension of procedural deadlines.** Suspension of procedural deadlines in all jurisdictions, with the exception of certain cases due to their specificity:
 - Criminal jurisdiction: habeas corpus proceedings, guard service actions, prison surveillance and gender violence.
 - Labour jurisdiction: actions related to collective conflicts and protection of rights and fundamental freedoms.
 - Contentious-administrative jurisdiction: matters related to the protection of fundamental rights.



➤ Civil jurisdiction: activities relating to the protection of minors or detention for mental disorder.

- **General suspension of administrative deadlines.** General suspension of all administrative deadlines related to the public sector (with the exception of certain administrative deadlines related to taxes (declarations and self-assessments) and social security (affiliation, settlement and contributions)) and those procedures closely linked to the facts justifying the State of Alarm.

However, with regard to the general suspension of administrative deadlines, the door is left open to agreeing on measures or resuming those deadlines which, if suspended, could cause some serious damage to the rights and interests of the concerned person, but for this it is necessary to have the agreement of the concerned person.

In principle, the procedural and administrative deadlines referred to above will be held in abeyance until the end of the State of Alarm, and/or any extensions thereof. In addition, the same applies to prescription and expiry periods, which are interrupted for the duration of the state of alarm and/or its extensions.

5. CORPORATE AND REGISTRATION MEASURES

The main measures taken in the **corporate area** are as follows:

- **Telematic celebration of the meetings of the governing bodies of entities.** During the period of the State of Alert, the governing bodies of Spanish entities may hold their meetings electronically or, under certain circumstances, by means of a written mechanism and without a meeting, even though this is not expressly provided for in the entity's articles of association.
- **Formulation and approval of annual accounts.** Temporary suspension of the deadlines for the formulation and approval of the annual accounts during the validity of the State of Alarm, which must be formulated and approved, respectively, within three months from the date on which the end of the State of Alarm is decreed.
- **Modification or, as the case may be, revocation of the agreement to call a general meeting of shareholders.** The administrative body may modify the place and time scheduled for the holding of the general meeting of shareholders or, if applicable, revoke it, provided that it is



scheduled to be held during the term of the State of Alert, by means of a notice published at least forty-eight hours in advance on the company's website and, if the company does not have a website, in the "Official State Gazette". In the event of the revocation of the agreement to call a meeting, the administrative body must call a new meeting within one month of the date on which the State of Alarms ended. The notary required to attend a general meeting of shareholders and to take the minutes of the meeting may use remote communication means in real time that adequately guarantee the fulfilment of the notary function.

- **Suspension of certain corporate deadlines.** Any right to separation, refund of contributions to cooperative members, or any legal or statutory cause for the dissolution of a company, will not take effect until the end of the state of alert, with their respective deadlines.
- **Cancellation of the duty to apply for competition.** During the validity of the State of Alarm, the obligation to request bankruptcy is suspended for those entities that have the obligation to declare it because they have a legal cause for dissolution due to losses.
- **Dissolution of companies.** If, before the declaration of the State of Alarm and during the validity of that state, there is a legal or statutory cause for the dissolution of the company, the legal period for the convocation by the administrative body of the general meeting of shareholders to adopt the agreement of dissolution of the company or the agreements that have the purpose of enervating the cause, is suspended until the end of that State of Alarm, the administrators will not be liable for the company's debts incurred during that period.
- **Suspension of the expiration of registration records.** General suspension of the expiration period of any registry entry subject to cancellation during the Alarm Status period.
- **Term of duration of the companies.** If, during the period of validity of the state of alert, the term of duration of the company established in the articles of association expires, the company will not be dissolved with full rights until two months have passed since the end of the state of alert.

NOTE: It is important to note that the deadlines for the submission of registration books have **NOT** been suspended.



6. FINANCIAL ARRANGEMENTS

So far, the main measures taken in the **financial field** are as follows:

- **Prohibition of constitution and increase of short positions and obligation to inform about them.** The National Securities Market Commission (CNMV) and the European Securities and Markets Authority (ESMA) have decreed, respectively, a series of measures aimed at controlling the short positions that have appeared in recent days on the securities markets:

- Firstly, the CNMV has temporarily prohibited the constitution and increase of short positions in securities admitted to trading in Spanish trading centres (Stock Exchanges and Alternative Stock Market (MAB)), with effect until 17/04, and this period may be extended if considered necessary⁴.
- Secondly, the ESMA has instructed that any net short position in excess of 0.1% of the share capital of any share listed on European regulated markets must be⁵ disclosed.

By virtue of the above, it is foreseeable that in the next few days the short positions built up in the last few weeks will be communicated, as well as those short positions of agents who do not want to communicate their position.

- **Measures related to the corporate governance of Spanish companies listed on regulated markets.** Exceptionally, it has been agreed to relax certain obligations relating to the corporate governance of listed companies:

- Extension of the deadlines for the submission of the annual financial and audit report, as well as for the interim statement and half-yearly report.
- Extension of the deadlines for holding the Ordinary General Meeting of Shareholders of listed companies.
- The possibility of calling a general meeting by telematic means, enabling remote voting and the possibility of holding the meeting anywhere in Spain, even if this is not provided for in the articles of association or, if this is not possible, holding it telematically.

⁴ CNMV. Temporary prohibition of the constitution or increase of net short positions on quoted shares - [\[LINK\]](#).

⁵ ESMA. Obligation to report net short positions of 0.1% and above - [\[LINK\]](#).



In any case, these measures should be considered as extraordinary and, therefore, only applicable in relation to the financial year 2020.

- **Limitation of control positions of non-EU investors.** The acquisition of control positions or positions exceeding >10% in Spanish entities dedicated to certain sectors by entities resident in countries outside the European Union and the European Free Trade Association is limited. This circumstance, although it is intended to prevent foreign investors from taking advantage of the current market situation to take control positions in strategic Spanish companies, may have the adverse effect of paralyzing certain investments, to the extent that it does not specify the size of the investment or limit its scope to listed entities.

It should be noted that these extraordinary measures may be revoked at the discretion of ESMA, the CNMV or the Spanish Government, with the exception of the rules on the relaxation of corporate governance obligations in respect of 2020, which we understand will remain in force regardless of the duration of the State of Alert.

7. DATA PROTECTION MEASURES

With regard to the area of **data protection**, the Spanish Agency of Data Protection (“AEPD”, by its initials in English) has expressed its opinion on the processing of data resulting from the current situation caused by the spread of the COVID-19 coronavirus:

- **The General Data Protection Regulation (GDPR) contains the necessary rules to legitimately allow the processing of personal data in situations where there is a health emergency of general scope.** Consequently, data protection should not be used to hinder or limit the effectiveness of measures taken by the authorities, especially health authorities, in the fight against the pandemic. It therefore provides that:
 - Recital 46 of the RGPD explicitly recognises as a legal basis for the lawful processing of personal data in exceptional cases, such as the control of epidemics and their spread, the mission carried out in the public interest (Art. 6.1.e) or the vital interests of the data subject or other natural persons (Art. 6.1.d).
 - The above legal bases allow for the processing of data without the consent of those concerned.
- **The processing of health data related to the COVID-19 coronavirus is allowed both for employees and for other external employees.** The AEPD concludes in its report that in



accordance with the regulations on the prevention of occupational risks and occupational medicine, employers may process, in accordance with these regulations and the guarantees established by these rules, the data of their employees that are necessary to guarantee the health of all their employees, which also includes the rest of the employees other than the person concerned, to ensure their right to health protection and to avoid contagion within the company and/or work centres.

- **The information obligations and other principles of the RGPD are not excluded.** The AEPD states in the report that:
 - Information obligations and other principles of applicable data protection regulations are not excluded. Furthermore, the collection of data should be limited to that which is strictly necessary without convenience being confused with necessity for the control of the spread of the epidemic.

You must be informed of the purpose of the processing and the data may not be processed for any purpose other than that indicated.

For further information, please contact:



Angela Lopez
Partner, Madrid
Angela.lopez@ds-ovslaw.com



David Aviles
Partner, Barcelona
David.aviles@ds-ovslaw.com



Veronica Ramirez
Partner, Barcelona
Veronica.ramirez@ds-ovslaw.com



Jaime Benito
Partner, Barcelona
Jaime.benito@ds-ovslaw.com



Julie Borobio
Partner, Barcelona
Julie.borobio@ds-ovslaw.com