

COVID-19: Companies' corporate bodies adjust to a new exceptional regime

The various pieces of legislation published during the state of emergency, together with statements by registrars and by the CNMV, have created a new exceptional regime governing the corporate bodies of commercial companies, which makes it necessary to structure this new legislation, by summarizing the measures and their implications depending on the body concerned and making a distinction between listed and unlisted companies.

In this chart we analyze everything that companies should be aware of in relation to calling and holding shareholders' meetings, preparing and approving financial statements, adopting resolutions, submitting the proposed allocation of profit/loss or legalizing their books.

Exceptional legal regime applying to commercial companies¹ as a result of COVID-19

Laws involved:

- Royal Decree 463/2020, of March 14, 2020, declaring a state of emergency to manage the COVID-19 public health crisis BOE (Official State Gazette) issue 67, of March 14, 2020
- Royal Decree-Law 8/2020 of March 17, 2020 on urgent extraordinary measures to confront the economic and social impact of COVID-19 (Official State Gazette -BOE-, issue 73, of March 18, 2020, <https://www.boe.es/boe/dias/2020/03/18/pdfs/BOE-A-2020-3824.pdf>)
- Royal Decree-Law 11/2020, of March 31, 2020, adopting additional urgent social and economic measures to confront COVID-19. (Official State Gazette -BOE-, issue 91, of April 1, 2020, <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4208>)
- Royal Decree-Law 16/2020, of April 28, 2020 on procedural and organizational measures to confront COVID-19 in the sphere of the justice system. (Official State Gazette -BOE-, issue 119, of April 29, 2020, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4705)
- [NIA-ES 706](#) (revised)
- [NIA-ES 560](#)
- [NIA-ES 570](#)
- [Decision of the Directorate-General for Legal Certainty and Attestation, April 10, 2020](#)
- [Commercial Code](#)
- [Instruction by the Directorate General for Registries and the Notarial Profession of February 12, 2015, on the legalization of business owners' books](#)

¹Associations, partnerships and commercial companies and foundations (cooperatives are commercial companies). These are the entities in its scope of application unless expressly stated otherwise.

- [Regulations on the Audit of Financial Statements](#)
- Spanish Accounting and Audit Institute: [Resolution of an audit issue.- Effect of Royal Decree-Law 8/2020, of March 17, 2020, in article 40, on the process of preparation, verification and approval of the financial statements of the various entities](#)
- [Spanish Accounting and Audit Institute \(ICAC\) decision of March 5, 2019, implementing the financial instruments and other corporate law elements relating to capital companies](#)
- [Joint statement by the Association of Registrars of Spain \(CRE\) and by the Spanish Securities Market Commission \(CNMV\) regarding financial statements and the proposed allocation of profit/loss at commercial companies in the context of the COVID-19 health crisis \(March 26, 2020\)](#)
- [New joint statement by the Association of Registrars of Spain \(CRE\) and by the Spanish Securities Market Commission \(CNMV\) regarding the shareholders' meetings of listed companies \(April 28, 2020\)](#)

To be noted also:

Article 4.2 of the Civil Code, according to which “criminal laws that are either exceptional or temporary shall not apply to facts or at times that do not expressly falling within their scope”.

Shareholder’s Meetign

Subject	Exceptional rule	Content	Comment
Shareholders’ meetings	Article 40.1 RDL 8/2020, as amended by final provision one of RDL 11/2020	<u>Even where not expressly envisaged in the bylaws, they may</u> be held by videoconference or by conference call provided that (1) everyone entitled to attend or their representatives have the necessary technology, (2) the secretary of the body can identify them, and (3) and expressly states this in the minutes, which the secretary will send immediately to the email addresses.	<ol style="list-style-type: none"> 1. This provision goes beyond the provisions of art. 182 of the Capital Companies Law (LSC), because it does not require a bylaw provision and allows the shareholders’ meeting to be held remotely in its entirety. 2. Although there seem to be three requirements for validity, only the first two can be considered requirements, (3) is a duty which is imposed on the secretary. 3. Obviously, the option of using this mechanism does not become an obligation. 4. In our opinion, the option of holding a meeting in this way although it is not envisaged in the bylaws, does not apply when the bylaws expressly forbid this mechanism. 5. Some doubt may arise as to whether it really has to be the secretary of the body or whether the acting secretary of the meeting of the body is sufficient. It seems reasonable to accept that it may be the acting secretary. 6. No standard is established for technology equipment nor is it a requirement for the company to provide it. It seems reasonable to establish in the call notice that it is presumed such

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			<p>equipment exists and to leave it up to shareholders to inform the company that they do not have the required technology, in which case the company is allowed to provide it.</p> <ol style="list-style-type: none"> 7. The subsequent sending to those present or represented is an instrument for validating the meeting and their identity, it is not a procedure for approval of the minutes. 8. A draft of the minutes can be sent. Bear in mind that if notarial minutes are involved a draft will not be sent, and it is doubtful that it will be done immediately. In fact, the provision does not specify this, and the very existence of this duty can be questioned in the case of notarial minutes. And if the purpose of sending the minutes is to ensure that the meeting is validly constituted (the list of attendees), it must be remembered (article 98 of the Commercial Registry Regulations (RRM)) that the list of attendees is not within the powers of the attesting notary. 9. Although there is no express provision (unlike the meetings of the managing body), the shareholders' meeting must be deemed to be held, unless there is a bylaw provision to the contrary, at the registered office (art. 175 LSC).
<p>Listed companies: Cancelled annual shareholders' meetings</p>	<p>Article 41.1 RDL 8/2020, as amended by final provision one of RDL 11/2020</p>	<p>Annual shareholders' meetings may be held in the ten months following the fiscal year-end.</p> <p>When the annual shareholders' meeting is called, provision may be made for <u>attendance through remote means and remote voting</u> as envisaged in articles 182, 189 and 521 LSC and for the holding of the shareholders' meeting <u>anywhere in Spain</u>, even if these aspects are not envisaged in the bylaws.</p> <p>If <u>the call notice has already been published</u> on the date of entry into force of RDL 8/2020, any of these cases can be provided for <u>in an additional announcement</u> which must be published at least <u>five calendar days before</u> the date set for holding the shareholders' meeting.</p>	<ol style="list-style-type: none"> 1. Option of holding the annual shareholders' meeting within the first ten months of the fiscal year. 2. Since the provision in this case uses the concept of fiscal year, it is broadened to apply listed companies which do not have a fiscal year that coincides with the calendar year. 3. The provision permits attendance by remote media, remote voting and the holding of the meeting anywhere in Spain even if this is not expressly envisaged in the bylaws. 4. If the call notice was already published on the date of entry into force of RDL 8/2020, the company may also use this power although it must publish an additional notice at least five calendar days in advance. 5. As an exception, the provision provides for several cases when the measures imposed by the public authorities impede the holding of the shareholders' meeting in the place and physical venue established in the call notice and the above power cannot be used: (i) when the shareholders' meeting has been constituted, the place where it is held can be altered within the same province.. This is due, in short, to the unsuitability of

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		<p>If, due to the restrictions imposed due to the COVID-19 crisis, it could not be held under the powers indicated above, the following will still be possible:</p> <p>i) if the shareholders' meeting had been validly constituted in that place and venue, it may be decided that this meeting continue to be held on the same day in another place and venue within the same province, establishing a reasonable period for the transfer of the attendees;</p> <p>ii) if the shareholders' meeting could not be held, the holding of the meeting at a subsequent call may be announced with the same agenda and the same publicity requirements as the shareholders' meeting that was not held, at least five days prior to the date set for the meeting.</p> <p>In this case, the managing body may resolve in the additional announcement to hold the meeting solely through remote mean, namely, without physical attendance by shareholders or their representatives, provided the option is provided of participating in the meeting by any of these means: (i) remote attendance; (ii) proxy granted to the meeting chairperson on remote media; and (iii) and advance voting using remote media. Any of these forms of participation at the shareholders' meeting may be established by the directors even if it is not provided for in the bylaws, provided that it is accompanied by reasonable safeguards to ensure the identity of</p>	<p>the venue to guarantee the health measures imposed.</p> <p>6. (ii) If the annual shareholders' meeting cannot be held, it may be called again within a period of five days, although the agenda cannot be altered. If it is wished to alter it, the right to issue a call a meeting with five days' advance notice is simply lost.</p> <p>7. For the latter case (annual shareholders' meeting which could not be held) an annual shareholders' meeting can be held solely through remote means.</p> <p>8. The reference to "in this case" may be interpreted as meaning that it has not been possible to hold the meeting. Although it may also be interpreted that the annual shareholders' meeting solely through remote means may also be used if the agenda is not altered.</p> <p>9. However, the beginning of the provision refers to the year 2020, which may lead us to wonder whether these annual shareholders' meetings solely through remote means are possible outside the COVID-19 situation and its exceptional rules.</p> <p>10. The new joint statement by the Association of Registrars in Spain and the National Securities Market Commission (CNMV) regarding the shareholders' meetings of listed companies, of April 28, 2020, seems (it does not expressly say so) inclined to extend the exceptional system to the so-called "de-escalation" period.</p> <p>11. In any event, that new joint statement encourages listed companies to issue open calls pointing out that a supplement published five days before the annual shareholders' meeting must specify the conditions under which it will be held.</p> <p>12. In particular, it is also pointed out that equality among shareholders must be ensured by the board of directors in the call notice if the freedom of attendance is different or may cause discrimination, for which it recommends annual shareholders' meetings solely through remote means.</p>

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		<p>the person who exercises his right to vote. Directors may attend the meeting, which will be deemed to be held at the <u>registered office</u> regardless of where the meeting chairperson is located, by audio or video conference call.</p>	
<p>Notarial minutes of the shareholders' meeting Remote minutes</p>	<p>Article 40.7 RDL 8/2020, as amended by final provision one of RDL 11/2020</p>	<p>Any notary who has been requested to attend a shareholders' meeting and to draw up minutes of the meeting may use remote means of communication in real time which adequately ensure fulfillment of the notary's duties.</p>	<ol style="list-style-type: none"> 1. Complementing the provision in article 40.4, the provision includes the option of notarial minutes (article 203 LSC) at remotely held shareholders' meetings (remote minutes). 2. The presence of the notary together with the chairman and secretary in the venue (art. 101.2 RRM) is waived by the provision, leaving the option of using remote communication equipment to the notary's discretion. 3. The notary's involvement must be requested (article 203 LSC). The provision does not clarify whether the request may be remote or whether presence is necessary to make the request at the notary's office. 4. The only requirement is that the notary must agree to draw up minutes remotely by being connected by the videoconferencing system to the place where the shareholders' meeting is held, and is required to check that such connection, due to its clarity of image and sound, reliability and security, enables him to adequately provide his services. 5. The notary's jurisdiction is determined by the place where the shareholders' meeting is held. In this respect, unless the bylaws provide otherwise (art. 175 LSC), the attesting notary will be one practicing in the area where the company's registered office is located (article 116 Notarial Regulations). 6. The requirements for the notary to be able to agree to act remotely must be: <ul style="list-style-type: none"> • The call notice must have informed the shareholders of the system by which the shareholders' meeting will be held and, where relevant, whether the possibility of casting votes by mail is provided for in the bylaws. • The technical specifications necessary for this purpose must be stated in the call notice. • All the shareholders or those who are going to represent them have the necessary equipment for the holding of the shareholders' meeting by videoconference.

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			<ul style="list-style-type: none"> The notary must agree to perform his duties remotely.
Approval of financial statements	Article 40.4 RDL 8/2020, as amended by final provision one of RDL 11/2020		See this section in the chapter on financial statements
Annual shareholders' meeting. Cancellation	Article 40.6 RDL 8/2020, as amended by final provision one of RDL 11/2020	<p><u>"If the call notice of the shareholders' meeting has been published before the declaration of the state of emergency but the meeting is to be held on a later date, the managing body may change the place and the time set for holding the shareholders' meeting or revoke the resolution calling the meeting by an announcement 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 (BOE). In the event of revocation of the resolution calling the meeting, the managing body must proceed to issue a new call notice within one month from the date on which the state of emergency ended.</u></p>	<ol style="list-style-type: none"> A very specific scenario is defined in relation to annual shareholders' meetings already called before the declaration of the state of emergency but scheduled to be held on a date during the state of alarm. Power is conferred on the managing body to alter the scheduled place and time. The option of cancelling it is also provided, but that is not strictly speaking new. A specific publicity procedure is established, similar to that for the call notice (under art. 173.1 LSC). The specification of a form of cancellation seems to forbid it being done by the same procedures as the call notice where the company is in the position envisaged in art. 173.2 LSC. The establishment of a procedure for publicizing the cancellation of the annual shareholders' meeting be extended (an exceptional rule which cannot be applied by analogy) to special meetings, where cancellation will still be possible by the procedures which have been described by the case law. The establishment of the period to call the meeting again of one month from the end of the state of alarm must be read in conjunction with art. 169 LSC.
Special shareholders' meeting. Cancellation	It is not specifically defined in the examined provisions	It is not specifically defined in the examined provisions.	<ol style="list-style-type: none"> In relation to the cancellation of special shareholders' meetings, neither the exceptional nor the ordinary right is stated. The case law requires that the cancellation complies with the same requirements of standing, form and publicity as the call notice. The cancellation must be approved by the directors (or liquidators) and must be carried out by the same means, and with the same formal and publicity requirements as are imposed on the company by law and the bylaws for the call notice. The period to be able to cancel it ends at the time of constitution, although a diligent director must cancel it as soon as he has taken the decision.

Board of Directors

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<p>Form of holding meetings of the managing body and of its executive, voluntary or mandatory committees</p>	<p>Article 40.1 RDL 8/2020, as amended by final provision one of RDL 11/2020</p>	<p><u>Even where not expressly envisaged in the bylaws</u>, meetings may be held by videoconference or by conference call, provided that (1) all the members of the body have the necessary technology, (2) the secretary of the body can identify them, and (3) and expressly states this in the minutes, which the secretary will send immediately to the email addresses of each of those present or represented.</p> <p>The meeting will be deemed to have been held at the legal entity’s registered office.</p>	<ol style="list-style-type: none"> 1. Although there seem to be three requirements for validity, only the first two can be considered requirements, (3) is a duty which is imposed on the secretary. 2. Obviously, the option of using this mechanism does not become an obligation. 3. In our opinion, the option of holding a meeting in this way although it is not envisaged in the bylaws, does not apply when the bylaws expressly forbid this mechanism. 4. Some doubt may arise as to whether it really has to be the secretary of the body or whether the acting secretary of the meeting is sufficient. It seems reasonable to accept that it may be the acting secretary. 5. No standard is established for technology equipment nor is it a requirement for the company to provide it. 6. The subsequent sending to those present or represented is an instrument for validating the meeting and their identity, it is not a procedure for approval of the minutes. 7. A draft of the minutes can be sent. 8. They should be sent to those present or represented at the meeting, not all the members of the managing body.
<p>Listed companies: Adoption of resolutions of the board of directors and of its audit committee, relating to the calling of the annual shareholders’ meeting</p>	<p>Article 41.2 RDL 8/2020, as amended by final provision one of RDL 11/2020</p>	<p>On an exceptional basis, and for the purposes of what is stated in the previous section, resolutions of the board of directors and resolutions of the audit committee which is required to report in advance, will be valid where they are adopted by videoconference or by conference call, even if this option is not envisaged in the bylaws, provided that all the directors have the necessary technology for this purpose, and the secretary can identify them, which must be stated in the minutes and in any certificate of the resolutions which is issued.</p>	<ol style="list-style-type: none"> 1. It is allowed, in exceptional cases relating to the annual shareholders’ meeting, to adopt resolutions of the board (and the preparatory resolutions of the audit committee) by videoconference or conference call. 2. This option is allowed by the lawmaker even if not expressly provided for in the bylaw. 3. The measure requires that the provisions adopted by the authorities impede or hinder face-to-face meetings. 4. The conditions are: (i) availability of equipment; (ii) the secretary must be able to identify them. This must be stated in the minutes and in the certificates of minutes. 5. The meeting will be deemed to be held and its resolutions to be adopted at the registered office.

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		<p>In such cases, the board meeting will be considered a single meeting held at the registered office.</p>	
<p>Form of adoption of resolutions of the managing body and of its executive, voluntary or mandatory committees</p>	<p>Article 40.2 RDL 8/2020, as amended by final provision one of RDL 11/2020</p>	<p>Even where not expressly envisaged in the bylaws, resolutions may be adopted by voting in writing without a meeting whenever the chairman so decides and must be adopted in this way where so requested by at least two of the members of the body.</p> <p>The meeting will be deemed to have been held at the registered office. The provisions of article 100 RRM will apply to all these resolutions.</p>	<ol style="list-style-type: none"> 1. The provision extends the system provided for corporations in article 248.2 LSC to all companies and similar private-law entities. 2. Obviously, the option of using this mechanism does not become an obligation. 3. In our opinion, the option of holding a meeting in this way although it is not envisaged in the bylaws, does not apply when the bylaws expressly forbid this mechanism. 4. It seems that the system provided in article 248.2 is made available, since that system may be specified by the chairman of the body (or demanded by two of its members). The possibility of any member of the body vetoing this procedure is thereby eliminated. 5. However, the reference to article 100 RRM, which contains the need for an express statement that there has been no objection by any member, is unclear. In any event, due to the legislative hierarchy we consider that that option (to object to the adoption by written consent procedure) is not allowed in this period. 6. The correct reference should have been to article 100.1 RRM in relation to the minutes, address and time of adoption of the resolution. 7. On the other hand, the provision in article 40.2 of RD 8/2020 relating to the place where the meeting is held is superfluous.

Financial statements (and accounting documents)

Subject	Exceptional rule	Content	Comment
<p>Preparation of financial statements (ordinary or abridged, on an individual or consolidated basis)</p>	<p>Article 40.3 RDL 8/2020, as amended by final provision one of RDL 11/2020</p> <p>Request for resolution of an audit issue.- Effect of Royal Decree-Law 8/2020, of March 17, 2020, in article 40, on the process of preparation, verification and approval of the financial statements of the various entities.</p>	<p>The obligation to prepare financial statements has been suspended until the end of the state of emergency, and the period for doing so will start to run for another three months on that date.</p> <p>The preparation of the accounts performed by the managing body or board of a legal entity during the state of emergency will be valid and they can also have them audited within the statutory period or avail themselves of the extension envisaged in the following subarticle (article 40.4 RDL 8/2020, as amended by RDL 11/2020).</p>	<ol style="list-style-type: none"> 1. Article 40.3 amends the timing rules for preparation of financial statements specified in article 253 for any entities which as of the date of the declaration of the state of emergency (March 14, 2020) had not prepared their financial statements and the time period for preparing their financial statements had not ended, calculated from their fiscal year-ends, by suspending that time period until the date on which the state of emergency ends, and extending it to run for three months starting on that end date. 2. Although the article talks about “suspension”, what actually happens is the counter is turned back to zero, meaning the three month time period will start to run from the end of the state of emergency.
<p>Repreparation of financial statements</p>	<p>There is no express reference. Article 38 of the Commercial Code</p>	<p>Although the legislation attempts to confirm all steps already taken and adds flexibility regarding the proposed allocation of profit/loss, there is nothing to prevent the financial statements being reprepared if in the judgment of the managing body this is recommended under the prudence concept.</p>	<ol style="list-style-type: none"> 1. Article 38.c of the Commercial Code requires repreparation in specific cases, as a result of risks that materialize between the preparing of the financial statements and the holding of the shareholders’ meeting. 2. See also Spanish Accounting and Audit Institute (ICAC) decision of March 5, 2019, , implementing the financial instruments and other corporate law elements relating to capital companies, especially article 25 on repreparing financial statements. Note, however, that this decision applies to fiscal years that commenced on or after January 1, 2020. 3. See also information notice NIA-ES 560 on Subsequent Events. 4. A repreparation of financial statements involves restarting the whole process and, therefore, auditing them again.
<p>Audit review</p>	<p>Article 40.4 RDL 8/2020, as amended by final provision one of RDL 11/2020</p>	<p>If, on the date of the declaration of the state of emergency or in its period of validity, the governing or managing body of a legal entity required to do so has prepared the financial statements for the previous financial year, the period</p>	<ol style="list-style-type: none"> 1. The article, in short, makes a distinction between two different cases. The case it is actually defining (financial statements prepared before or during the state of emergency), from where the financial statements are prepared, under article 40.3, after the state of emergency. 2. For the first case (before or during), it determines a two-month

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		for auditing those statements, relating to both mandatory or voluntary audits, will be deemed extended for two months from the end of the state of emergency.	time period from the end of the state of emergency. 3. In the second case (financial statements prepared after the state of alarm) article 270.1 LSC will be applicable
Approval of financial statements	Article 40.5 RD 8/2020, as amended by final provision one of RDL 11/2020)	The annual shareholders' meeting to approve the financial statements for the previous fiscal year must be held within three months from the end of the period for preparing the financial statements.	<ol style="list-style-type: none"> 1. Article providing an exception to the two mentioned above. 2. The time period for preparing financial statements ends three months after the end of the state of emergency. 3. Article 164.1 LSC is applicable, even though it uses the fiscal year-end as the start date of the time period, and the set of provisions in article 40 RDL 8/2020 uses the end of the state of emergency. 4. Special rule for listed companies (the annual shareholders' meeting must be held within the first three months of the fiscal year).
Cancelled annual shareholders' meetings	Article 40.6 RD 8/2020, as amended by final provision one of RDL 11/2020	<p><u>“If the call notice of the shareholders’ meeting has been published before the declaration of the state of emergency but the meeting is to be held on a later date,</u> the managing body may change the place and the time set for holding the shareholders’ meeting or revoke the resolution calling the meeting by an announcement 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 (BOE). In the event of revocation of the resolution calling the meeting, the management body must proceed to issue a new call notice within one month from the date on which the state of alarm has ended.</p>	See the comment in the section on the shareholders’ meeting.
Proposed allocation of profit/loss	Article 40.6 .bis RD 8/2020, as amended by final provision one of RD 11/2020	<p><u>“Companies which, having drawn up their financial statements, call the annual shareholders’ meeting on or after the date of entry into force of this</u></p>	<ol style="list-style-type: none"> 1. Unlike other provisions in article 40 RDL 8/2020, it only applies to commercial companies and not to the other similar private-law entities subject to the same treatment. These are: <i>sociedades personalistas</i> -entities owned and managed by the

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		<p><u>provision</u>, may replace the proposed allocation of profit/loss contained in the notes to the financial statements with another proposal.</p> <p>The managing body must provide reasons, based on the situation created by COVID 19, for the replacement of the proposed allocation of the profit/loss, which must also be accompanied with a statement by the auditor stating that he would not have altered his audit opinion if he had been aware of the new proposal when he signed the opinion.</p> <p><u>In the case of companies that have called their annual shareholders' meeting</u>, the managing body may remove the proposed allocation of the profit/loss from the agenda for the purpose of submitting a new proposal for approval by a shareholders' meeting which must also be held within the statutory period for holding the annual shareholders' meeting. The managing body's decision will have to be published before holding the shareholders' meeting already called. In relation to the new proposal, the requirements for reasons to be provided and an auditor's statement mentioned in the previous paragraph must be observed. The managing body's certificate for the purposes of the filing of financial statements will only evidence approval, if applicable, of the financial statements, and an additional certificate relating to the approval of the proposed allocation of the profit/loss may be filed with the commercial registry later.</p>	<p>same person-, <i>sociedades capitalistas</i> -entities with separate ownership and management- and <i>sociedades mutualistas</i> -entities owned by people working at them- of a commercial nature (<i>sociedad colectiva</i> -general partnership-, <i>sociedad comanditaria</i> -limited partnership-, cpa - partnership limited by shares-, <i>sociedad anónima</i> -publicly traded company, <i>sociedad limitada</i> -limited liability company-, <i>sociedad cooperativa</i> -cooperative company-, etc.).</p> <ol style="list-style-type: none"> 2. The legislation defines various scenarios. 3. FIRST SCENARIO.- Where the financial statements have already been prepared by the managing body, and the managing body calls an annual shareholders' meeting for their approval to be held after the entry into force of the legislation. Note that article. 40.6 bis, is a completely new addition in RDL 11/2020. Because it does not exist in RDL 8/2020, it must take effect from the entry into force date of RDL 11/2020. 4. In the above scenario, the proposed allocation of profit/loss may be <u>altered or replaced</u> without needing to be prepared again or reviewed by auditors. 5. All of this is subject to the following conditions: (1) Reasons based on the COVID-19 crisis; (2) accompanied with a statement by the auditor confirming that his opinion would not have altered. 6. The certificate required by the registry must include the whole set of resolutions by the shareholders' meeting, including the new proposed allocation of profit/loss. 7. SECOND SCENARIO.- Where the financial statements have already been prepared, reviewed by the auditors and the annual shareholders' meeting for their approval has already been called, the managing body may <u>withdraw</u> the proposed allocation of profit/loss and retain the call notice. 8. This is also subject to conditions. (1) The withdrawal decision must be made public before the called shareholders' meeting is held; (2) A new shareholders' meeting must be called to approve a new proposed allocation of profit/loss. (3) The new proposed allocation of profit/loss must be accompanied with a statement by the auditors informing that they would not have altered their opinion. 9. The certificate for the registry must be drawn up in relation to all accounting documents except for the proposed allocation

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			<p>of profit/loss (which is not approved) and when the new shareholders' meeting is held to approve the proposed allocation of profit/loss, a certificate must be drawn up on that meeting.</p> <p>10. Article 378.5 RRM requires a certificate to be filed for a resolution that is not adopted.</p>
<p>Listed companies: New allocation of profit/loss</p>	<p>Article 41.3 RD 8/2020, as amended by final provision one of RDL 11/2020</p>	<p>The new proposed allocation of profit/loss, the reasons for it provided by the managing body and the auditor's statement must be made public, as soon as they are approved, as information supplementing the financial statements on the entity's website and on that of the CNMV (Spanish National Securities Market Commission) as other relevant information or, if mandatory in the light of the specific case, as inside information.</p>	<ol style="list-style-type: none"> 1. This measure is designed to guarantee the principle of transparency in securities markets. 2. They must be made public in the usual manner, namely on the website and at the CNMV. 3. The obligation will apply to the proposal, the reasons provided by the managing body and the auditors' statement informing that the new proposed allocation of profit/loss would not have altered their opinion on the financial statements (see the general comments). 4. The Joint statement by the Association of Registrars of Spain (CRE) and by the Spanish Securities Market Commission (CNMV) of March 26, 2020 contained the same affirmation (point 2 in fine).
<p>Legalization of mandatory books (article 25 and article 26 of the Commercial Code and article 333.2 RRM)</p>	<p>There is no mention in any of the exceptional pieces of legislation that have been passed. In the absence of any specification otherwise the provisions in the Decision by Directorate-General for Legal Certainty and Attestation (formerly DGRN), of April 10, 2020 will apply.</p>	<p>AAny companies for which, as of March 14, 2020, the time period for preparing their financial statements had already ended, will not be affected by the suspension so the general rules on the legalization of mandatory books will apply.</p> <p>Similarly, any companies whose fiscal year-end date falls after the end of the state of emergency (when that date has been determined), and which therefore do not fall under article 40, must legalize their mandatory books under the general rules.</p> <p>By contrast, any companies for which, as of March 14, de 2020, the time period for preparing their financial statements had not ended and which are subject to article 40.3, have four months running</p>	<ol style="list-style-type: none"> 1. The absence of any express determination in RDL 8/2020 and the fact that there is no reason why the remote filing option should have to be interrupted by the state of emergency, had made it unclear how to file books of account. 2. The Directorate-General for Legal Certainty and Attestation assumes <i>“that the time periods for preparation of the financial statements and for the legalization of mandatory books do not appear to be related in the legislation, it is equally true that it is extremely common practice to prepare the financial statements and to prepare the books of account later for their legalization”</i>. 3. So, any companies not falling under article 40.3 mentioned above, must follow the general rules in the Commercial Code. 4. For any companies that do fall under article 40.3, an extraordinary four-month time period is determined, running from the end of the state of emergency. 5. Obviously, in the same way as article 40.3 is optional not mandatory, there is nothing to prevent the books being filed for legalization within the periods envisaged originally.

Subject	Exceptional rule	Content	Comment
		from the date on which the state of emergency ends in which to file their mandatory books for legalization.	
Listed companies: Annual financial report, half-yearly financial reports and interim management statements	Article 41.3 RDL 8/2020, as amended by final provision one of RDL 11/2020	In 2020, the obligation to publish and send their annual financial reports to the CNMV and auditor's reports on their financial statements may be performed within up to six months after their fiscal year-ends. That time period will be four months for the publication of interim management statements and half-yearly financial reports.	This is a provision on time periods.