

Spain, June 1 to June 14

COVID-19: Preparation of financial statements and corporate income tax, recommencement of time periods, remote trials, gradual return to workplaces, insolvency proceedings and compliance with criminal law

In a new edition of our COVID-19 Special Newsletter, we examine the key new legislation approved over the past two weeks in all areas of business law. The gradual scaling back of lockdown, the recommencement of activities, and the start of a gradual return to workplaces have been the main topics over the past fortnight. The time periods for fulfillment of obligations related to the preparation of financial statements and their corporate income tax consequences have been specified, and procedural and administrative time periods will recommence this week. We also discuss in this edition the importance of compliance with criminal law amid the current circumstances, and consider the opportunities offered by insolvency proceedings.

Corporate law / Commercial contracts

Over the past two weeks amendments have been approved to a few of the existing measures, which cannot really be described as new measures. These were as follows:

- 1. Preparation of financial statements.** The time periods for the fulfillment of obligations relating to preparation and approval of the financial statements have been specified. See [here](#) for further information.
- 2. Moratoriums.** The right to claim purely contractual moratoriums under the favorable regime described is made conditional on the master agreements for the industry signed by the lender executing the moratorium having been reported to the Bank of Spain for their registration and for subsequent publication on its website. See [here](#) for further information.
- 3. Recommencement of time periods.** The suspension of time periods for exercising rights and bringing action has been ended, and they will recommence on June 4, 2020. Further information is given in point 1 of the Litigation and Arbitration section.

Tax

- 1. Corporate Income Tax.** In response to the health crisis and lockdown, Royal Decree-Law 8/2020, of March 17, 2020 (as amended by Royal Decree-Law 19/2020) approved various extraordinary measures to give listed and unlisted companies more time to prepare and approve their financial statements. This may lead to many companies having to prepare their 2019 corporate income tax self-assessments before their financial statements have been appropriately prepared and approved. Royal Decree-Law 19/2020 provided a mechanism allowing a new self-assessment to be filed until November 30, 2020 if the approved financial statements differ from the information used in the self-assessment having to be filed in the voluntary period, without any surcharges, although late-payment interest will accrue. In our [alert](#) dated May 27 we examine this regime in detail.
- 2. Real estate tax (IBI) and tax on economic activities (IAE).** Madrid city council approved, on May 29, 2020, the heralded real estate tax (IBI) and tax on economic activities (IAE) reductions for certain activities that have been hit hard by the health crisis. In our [alert](#) we examine the requirements for claiming these reductions.
- 3. VAT.** In our special newsletter for the week between April 13 and April 19 ([see here](#)), we discussed our conclusions on the effects on VAT, corporate income tax and personal income tax of the renegotiations of rental agreements that are occurring as a

result of the COVID-19 crisis, from the standpoint of the legislation in force and resolutions by the Directorate General for Taxes issued in previous years. New resolutions have recently been published on this issue in relation to VAT, which we summarize in [our commentary](#).

Labor and employment

The main events of the past two weeks were the scaling back of lockdown measures, the recommencement of activity, and the start of a phased return to workplaces. They have also been weeks of breaking employment news. Various bodies have issued interpretations and conduct guidelines to deal with doubts prompted by the rules on ERTE temporary layoff procedures. The first online labor trial has been held and systems are being brought into operation for holding conciliation hearings remotely. Lastly, a possible repeal of the labor reform has returned to public debate, and widespread use of working from home arrangements has caused intense discussion over the rules governing them.

1. Order published on the application of phase 3 of the plan for transition to the new normality. [Order SND/458/2020](#) provides for measures on easing restrictions, prevention and hygiene measures, and continues to encourage, wherever possible, working from home arrangements for workers that are able to perform their work remotely. It also states, however, that companies will be able to prepare procedures for returning to the workplace under labor and employment legislation and occupational risk prevention legislation, which will have to include recommendations on the use of suitable protective equipment for the level of risk, a description of the safety measures to be applied, rules on the return to work with a phased timetable for staff, wherever possible, and work/life balance.

2. General Work Directorate has issued criteria in reply to requests submitted in relation to rules on ERTE temporary layoff procedures. In them it sets out its interpretation criteria for various matters, including the members of the negotiating committee for ERTE temporary layoff procedures on economic, technical, organization or production-related grounds (in which it recognizes a preference for union-elected representatives even if not all the elected unions are present) or the application of Royal Decree-Law 18/2020, dealing with issues such as the definition of full or partial ERTE temporary layoff procedures due to force majeure, the removal of employees from ERTEs, or partial recommencement of activities, notification to the labor authority of the decision to end the ERTE completely or the removal of some employees and their possible inclusion later if the circumstances so allow.

These criteria are not binding, however, instead they are simply informative, because the authorities do not have the power to make legal interpretations, which lies exclusively with the courts.

Moreover, these official notices refer to the Social Security General Treasury for various matters related to relief from contributions. That body has conveniently published a newsletter "[Noticias Red](#)", **on May 28, 2020** providing further information on contributions from the standpoint of Royal Decree-Law 18/2020.

3. Common guidelines on inspection activities are defined in relation to ERTE temporary layoff procedures. The labor inspectors have issued a document to attempt to ensure that the activities of the different special offices and of provincial inspection authorities in relation to ERTE temporary layoff procedures arising from COVID-19 are uniform throughout the country.

The document deals separately with the specific cases in the various sectors (primary, industrial, services, construction, transport and other specific cases), having regard, also, to the various periods since the state of emergency (until March 29, the period between March 30 and April 9, together with the period after April 9).

4. Procedure for the activities of occupation risk prevention services to tackle COVID-19 as of May 22, 2020. The **[updated conduct procedure](#)** adjusts the document to the new diagnostic, surveillance and monitoring strategy in the transition phase of the COVID-19 pandemic, and updates the definition of particularly sensitive worker, along with the conduct guidelines for the management of vulnerable circumstances and risk in healthcare and social care environments, and in environments outside healthcare and social care.

5. The Ministry of Health has updated its instructions on diagnostic testing to detect COVID-19 at companies. In those instructions it indicates the tests required where suspected cases are identified, and emphasizes the crucial involvement of prevention services and their cooperation with the health authorities for early detection of cases of likely contagion. The instructions require all healthcare centers, services and establishments involved in clinical diagnostic testing, regardless of their ownership, to report to

the competent health authority for the autonomous community where they are located or provide their services all confirmed cases of COVID-19 that they have discovered after diagnostic testing; and any public or private entity acquiring equipment to carry out diagnostic tests to detect COVID-19 have to report this to that health authority.

6. Publication of Royal Decree-Law 19/2020, of May 26, 2020, adopting additional measures on farming, scientific, economic, employment-related, social security and tax matters to soften the effects of COVID-19. The **decree-law** contains a few labor and employment measures, including recognition as an occupational accident of the social security benefits to which staff providing services at healthcare or social care centers become entitled, where they contract COVID-19 in the course of their duties; in relation to the unemployment benefit of performers in public entertainment events; or in relation to employment and the social security regime in agriculture.

7. Remote trials and conciliation hearings are already happening. On May 18, 2020 the first remote trial in the labor jurisdiction took place before Vigo Labor Court number 2. And, the various mediation, arbitration and conciliation bodies are bringing into operation the means that will allow conciliation hearings to be held remotely.

8. Repeal of the labor reform and rules governing working from home come into public debate. Following the announcement of a complete repeal of the labor reform followed by rectification of the scope of that repeal, restricted to certain specific elements of it, a debate that had arisen before the COVID-19 crisis has been taken up again, and its outcome is uncertain for the time being.

The widespread use of working from home arrangements has created intense discussion over the need for more detailed rules on this concept and the potential obligations associated with it.

Litigation and Arbitration

1. Lifting of the suspension of procedural and substantive time periods and recommencement of judicial proceedings.

An order has been made to lift, starting on June 4, 2020, the suspension of procedural and substantive time periods determined in additional provisions two and four of Royal Decree-Law 463/2020, of March 14, 2020, declaring the state of emergency (more information, [here](#)). Also, on that same date, the judicial activities mentioned will start up again, where health-related, organizational and procedural requirements so allow (more information, [here](#)).

2. Remote hearings in civil proceedings. Since last week we have been taking part in remote hearings in non-essential proceedings conducted by the courts of Madrid autonomous community. The hearings have been held using the online video call application Zoom with satisfactory results. For the time being, this is only allowed for hearings with the exclusive participation of professionals, although the courts have not rejected the option of holding other proceedings with parties or witnesses also taking part. This results from putting into practice the permission, envisaged in RDL 16/2020, of April 28, 2020, on procedural and organizational measures to confront COVID-19 in the sphere of the justice system, to hold remote hearings during the state of emergency and until three months after it has ended.

3. The General Council of the Spanish Judiciary has published guidelines on holding judicial proceedings remotely.

The guidelines provide parameters and recommendations for reconciling the preferred use of these types of technology in the process with the court's plenary session, with the principles and safeguards established in the laws. Over four sections it addresses elements related to the preferred use of remote technology, how the proceedings are to be held, the place and minimum technical requirements that must be taken into account for carrying out the various steps in the process remotely. They are available [here](#).

4. The importance of compliance with criminal law in the time of COVID-19. The health crisis we have been suffering has brought an extremely important challenge for companies, which have had to adapt at record speeds to the health restrictions imposed to control the pandemic, by modifying, if not completely changing, their production systems, and the ways and means of providing their services.

In this context in which large numbers of workers are working from home, or working conditions have had to be modified in almost every workforce, companies must not lose sight of the importance of having in place a suitable corporate compliance system, in that the crime risks for companies, however much their activities have been reduced, far from disappearing, have often increased due to the new ways of working and the exceptional situation we are encountering. Further information, [here](#).

Restructuring and Insolvency

Spain currently has various restructuring instruments: pre-insolvency mechanism, validation of refinancing agreements, out-of-court payment agreements or insolvency proceedings. In this edition, we highlight a few features of this last concept, which may be an interesting option for some companies in certain circumstances.

1. The fact of RD 16/2020 not requiring distressed debtors to file for insolvency does not mean they cannot do so if it suits them. The Insolvency Law places an obligation on directors to petition for an insolvency order within two months following the occurrence of technical insolvency, and they may be personally liable if they fail to do so.

By reason of the COVID-19 crisis, article 11 of RD 16/2020 has provided an exception. That exception determines that the duty to petition for an insolvency order will not be a requirement for directors until December 3, 2020 (for further information, see [here](#)).

However, this is not always being interpreted correctly: the fact of the duty to petition for an insolvency order being extended until 2020 does not mean that debtors who need to do so cannot petition for an insolvency proceeding at any time before December 31, 2020.

There are reasons why, in the current crisis, and beyond the associated stigma, an insolvency proceeding can protect and help distressed companies. The commercial courts are operating in the state of emergency period, and it is considered that certain types of insolvency proceedings legally qualify for fast track processing.

2. An insolvency proceeding may be a useful tool for debtors needing to “hibernate” their businesses during the COVID-19 crisis. One of the aims of both the insolvency proceeding, and the pre-insolvency mechanism, is to provide the debtor with a framework for stable negotiation to conclude a refinancing agreement or arrangement with its creditors.

The period in which that negotiation may be carried out will depend on various factors and may last for a considerable length of time. During that period, the company has a number of “protective shields” which, for example, will make it immune to enforcements or attachments by their creditors (including public claims), or attempts to terminate essential contracts.

Namely, until a solution in the form of an arrangement or liquidation is reached, the insolvency proceeding may provide an opportunity to protect and hibernate any businesses in need of this to restructure as a result of this unprecedented Covid-19 crisis.

3. The insolvency order usually implies quick recovery of debtors’ cash flow positions. Broadly speaking, an insolvency order allows the debtor to stop paying its earlier debts and creditors are unable to seek payment through enforcement or attachments. An insolvency proceeding allows the debtor to continue making the payments associated with operational agreements or working capital needed to continue operating.

Additionally, during an insolvency proceeding, besides not having to service debt, in some cases interest stops accruing altogether. Operating restructuring measures may also be adopted (labor measures, termination of onerous contracts, etc.) along with financial mechanisms (write-offs, deferrals, etc.).

This all contributes to improving the debtor’s cash flow position during the insolvency proceeding, and also makes it easier for an agreement to be reached with a significant majority of creditors which will, in the end, allow the company to leave insolvency behind.

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Garrigues, a multidisciplinary team of specialists facing COVID-19

The worldwide health alert triggered by coronavirus is generating a great deal of uncertainty among companies, affecting all aspects of their activity. Since the crisis took hold, Garrigues has been at the disposal of its clients, with multidisciplinary teams specializing in all practice areas in the countries in which it is present. These are also the teams responsible for supervising the contents of this Special section, in which we provide information on all legal developments in relation to the coronavirus crisis, on proposals made by social agents, agreements, decisions, orders, etc.; in short, all the relevant information which companies need to be aware of.

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